No 260

No. 15110

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United States
Court of Appeals
for the Ninth Circuit

JOHN LUCAS HUDSON, Sr., and PACIFIC-PALMDALE DEVELOPMENT COMPANY, a Corporation, Appellants,

vs.

WILLIAM A. WYLIE, as Trustee in Bankruptcy of the Estate of JOHN LUCAS HUDSON, Sr., Bankrupt, Appellee.

Transcript of Record

Appeal from the United States District Court
for the Southern District of California
Central Division

FILED
PAUL P. O'BRIEN, CLERK

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif. —6-11-56

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

MERRILL L. GRANGER,

1032 Wilshire Boulevard,
Santa Monica, Calif.

For Appellee:

CRAIG, WELLER & LAUGHARN,

111 West 7th Street,
Los Angeles 14, Calif. [1*]

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In the United States District Court, Southern District of California, Central Division

In Bankruptcy No. 60,798-WM

In the Matter of

JOHN LUCAS HUDSON, SR., Bankrupt.

PETITION TO REQUIRE BANKRUPT TO ACCOUNT

To the Honorable Reuben G. Hunt, Referee in Bankruptcy:

The verified petition of William A. Wylie respectfully represents:

I.

That he is the duly elected, qualified, and acting trustee in the above-entitled bankruptcy proceeding.

II.

That your petitioner is informed and believes and upon such information and belief alleges that shortly prior to bankruptcy and on April 6, 1954, the within bankrupt made an oral agreement with one Lloyd R. Reeve that he would assist the said Lloyd R. Reeve in the procurement of contracts from the Commodity Credit Corporation of the United States Government to build grain vats and that it was agreed that the bankrupt was to receive some portion of the profits under said contracts.

III.

That your petitioner is informed and believes and upon [2] such information and belief alleges that on

April 6, 1954 the within bankrupt with intent to hinder, delay or defraud his creditors did cause to be organized and incorporated a certain corporation known as Pacific Palmdale Development Company, a California Corporation.

IV.

That the said Pacific Palmdale Development Company has never issued any stock and your petitioner is informed and believes and upon such information and belief alleges that the said corporation was dominated and controlled by the within bankrupt.

V.

That your petitioner is informed and believes and upon such information and belief alleges that on April 7, 1954 the within bankrupt caused a certain contract in writing to be executed by and between Pacific Palmdale Development Company and Lloyd R. Reeve Inc. and among the terms and provisions of the said contract were provisions which are substantially as follows:

(a) That the Pacific Palmdale Development Company was to make the bankrupt available to Lloyd R. Reeve Inc. for the purpose of procuring contracts as aforesaid with the Commodity Credit Corporation;

(b) That the within bankrupt was to be furnished to Lloyd R. Reeve Inc. without additional charge to Lloyd R. Reeve Inc.;

(c) That the within bankrupt was to be made available not only to procure contracts but to assist

with technical advice in the construction of the grain vats to be constructed by and under contracts procured;

(d) That 10% of the net profits under any contracts procured were to go to Gene Wilbur, a public [3] relations man connected with Hudson;

(e) That 10% of the net profits were to go to Liff & Kimm, architects;

(f) That the balance of the profits from any such contracts procured were to be *dividend* equally between Lloyd R. Reeve Inc. and Pacific Palmdale Development Company;

(g) That without prejudice to the right of Reeve to demand performance of the bankrupt, the Pacific Palmdale Development Company was to have the right to assign any and all of its profits directly to the bankrupt.

VI.

That your petitioner is informed and believes and upon such information and belief alleges that on April 9, 1954, Lloyd R. Reeve with the assistance of the bankrupt did submit bids to the Commodity Credit Corporation.

VII.

That your petitioner is informed and believes and upon such information and belief alleges that on April 17, 1954 the aforementioned bids were accepted by the Commodity Credit Corporation and Lloyd R. Reeve and the within bankrupt were so notified.

VIII.

That your petitioner is informed and believes and upon such information and belief alleges that on April 19, 1954 Lloyd R. Reeve Inc. did accept the acceptance of their bid by the Commodity Credit Corporation, this being the date of bankruptcy of the within bankrupt, and that subsequent thereto the said contracts were performed by the within bankrupt and Lloyd R. Reeve Inc.

IX.

That your petitioner is informed and believes and upon [4] such information and belief alleges that on May 21, 1954, the within bankrupt was paid the sum of $1,000 on account of his services rendered under the aforementioned contract of April 7, 1954; that on May 21, 1954, the within bankrupt was paid $15,000 on account of his services performed under the said contract of April 7, 1954, and that on December 17, 1954, the within bankrupt was paid $5,000 on account of his services performed under the contract of April 7, 1954.

X.

That your petitioner is informed and believes and upon such information and belief alleges that all of the aforementioned payments were made by and with the consent and assignment of the Pacific Palmdale Development Company and that in fact the only party who ever negotiated with Lloyd R. Reeve was the within bankrupt and that the within bankrupt represented to Lloyd R. Reeve that he owned the Pacific Palmdale Development Company.

XI.

That your petitioner is informed and believes and upon such information and belief alleges that Lloyd R. Reeve Inc. now has on hand a sum in excess of $46,000 of which the Pacific Palmdale Development Company and/or the bankrupt is entitled to approximately $23,000 and that there may be additional profits in the future on contracts falling under the terms of the aforementioned agreement of April 7, 1954.

XII.

That the Pacific Palmdale Development Company has filed action No. 631386 in the Superior Court of the State of California in and for the County of Los Angeles, vs. Lloyd R. Reeve, Incorporated, a corporation, seeking an accounting under the aforementioned contract of April 7, 1954 and that the matter is now set for trial on or about October 10, 1955 and a motion for the appointment of a receiver of Lloyd R. Reeve, Incorporated, a corporation, [5] is now set for hearing on or about September 12, 1955.

XIII.

That if the Pacific Palmdale Development Company is successful in the aforementioned proceedings, it is probable that assets which might properly belong to this estate might be paid over to the Pacific Palmdale Development Company and dissipated to the irreparable harm of this estate.

XIV.

That the within bankrupt made no reference in

any of his schedules to any interest in and to the Pacific Palmdale Development Company or the said contract of April 7, 1954 and has never at any time amended his schedules so as to show any interest in and to these assets.

XV.

That the within bankrupt should be required to appear and present an accounting as to what portion of sums realized under the contract of April 7, 1954 is an asset of this estate and to present evidence as to whether or not the Pacific Palmdale Development Company is not in fact his alter ego.

Wherefore, your petitioner prays that the Court issue an order to show cause directed to the within bankrupt and to the Pacific Palmdale Development Company requiring them to appear and show cause, if any they may have, why the Court should not make and enter its order declaring and decreeing that the Pacific Palmdale Development Company was the alter ego of the within bankrupt and declaring and decreeing that all profits realized under the aforementioned contract of April 7, 1954 are assets of this estate and ordering the within bankrupt to pay over to this estate all sums which the Pacific Palmdale Development Company has paid to him, and to further show cause why the Court should not issue its restraining order restraining them from proceeding in the case of Pacific Palmdale Development Company, a corporation, vs. Lloyd R. [6] Reeve, Incorporated, a corporation, Los Angeles County Superior Court action No. 631386, and your

petitioner further prays that pending any hearing on this petition or order to show cause issuing thereunder that the Court issue a restraining order restraining the bankrupt and the Pacific Palmdale Development Company from proceeding in any manner in the aforementioned Los Angeles County Superior Court action and that the said restraining order not require your trustee to post any bond as required in Rule 65 of the Federal Rules of Civil Procedure other than his trustee's bond which has been heretofore filed herein upon his qualification as such trustee.

Dated: September 2, 1955.

CRAIG, WELLER & LAUGHARN
/s/ By WILLIAM E. BARTLEY,
Attorneys for trustee [7]

Duly Verified. [8]

[Endorsed]: Filed Sept. 8, 1955.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE AND RESTRAINING ORDER

Upon reading and filing the verified petition of William A. Wylie, trustee herein, and good cause appearing therefor,

Now, Therefore, upon the motion of Craig, Weller & Laugharn by William E. Bartley of counsel, attorneys for the trustee,

It Is Ordered that John Lucas Hudson, Sr., the within bankrupt, and the Pacific Palmdale Development Company, a California corporation, be and appear before the undersigned Referee in Bankruptcy at his Court Room, 324 Federal Building, Temple & Spring Streets, Los Angeles, California, on the 14th day of September, 1955, at two o'clock in the afternoon, and then and there show cause why the prayer of the trustee herein should not be granted and why an order should not be made and entered restraining and enjoining them from proceeding in the Los Angeles Superior Court action entitled Pacific Palmdale Development Company vs. Lloyd R. Reeve, Incorporated, a corporation, Case No. 631386, and further why the Court should not temporarily enjoin and restrain them from proceeding with said action in said Superior Court until a final determination of this [9] order to show cause and the petition upon which it is based,

And It Is Further Ordered that the said John Lucas Hudson, Sr., (the within bankrupt), and the Pacific Palmdale Development Company, a corporation, be and the same are hereby temporarily enjoined and restrained from proceeding with the Los Angeles County Superior Court action of Pacific Palmdale Development Company, a corporation, vs. Lloyd R. Reeve, Incorporated, a corporation, Case No. 631386, until a final determination of the within order to show cause and petition upon which it is based;

And It Is Further Ordered that in connection with the issuance of the within restraining order, no

bond need be posted by the trustee herein, as referred to in Rule 65, Federal Rules of Civil Procedure, other than his trustee's bond which has been heretofore filed herein upon his qualification as such trustee;

And It Is Further Ordered that service of the within order to show cause be made upon John Lucas Hudson, Sr., 856 - 26th Street, Santa Monica, California, Merrill L. Granger, Attorney at law, 422 Wilshire Boulevard, Santa Monica, California, and Pacific Palmdale Development Company, c/o John Lucas Hudson, Sr., 856 - 26th Street, Santa Monica, California, by United States Mail, postage prepaid, at least 5 days prior to the above set forth hearing date;

And It Is Further Ordered that, pursuant to the provisions of Bankruptcy Rule 201f of this Court, if the Respondents desire to contest the petition filed herein upon which the order to show cause is issued, said Respondents, or any of them, shall file herein at least 1 day prior to the date of the hearing as set forth herein his response and answer in writing.

Dated: September 8, 1955.

/s/ REUBEN G. HUNT,
Referee in Bankruptcy [10]

[Endorsed]: Filed Sept. 8, 1955.

[Title of District Court and Cause.]

ANSWER OF BANKRUPT AND PACIFIC-PALMDALE DEVELOPMENT COMPANY TO PETITION FOR ORDER REQUIRING ACCOUNTING

To the Honorable Reuben G. Hunt, Referee in Bankruptcy:

By way of verified answer to the Petition of the Trustee herein to Require Bankrupt to Account, said bankrupt, John Lucas Hudson Sr. and Pacific-Palmdale Development Company, a California corporation, each for himself respectfully states:

I.

Said Petition is insufficient on which to base any order for accounting as sought for the reason that no facts are pleaded tending to establish that said Pacific-Palmdale Development Company, a corporation, is the alter ego of said bankrupt and for the further reason that it is not alleged in said Petition that this bankrupt had any interest or property right which he wrongfully failed to list in his schedule of assets herein.

By Way of a Further, Separate and Distinct Answer to said Petition, each of these respondents respectfully states:

I.

He denies each and every, all and singular, the allegations set forth in Paragraph II of said Petition. [11]

He denies each and every, all and singular, the allegations set forth in Paragraph III of said Petition and in that respect alleges that said Pacific-Palmdale Development Company is a corporation, organized April 6th, 1954 under the laws of the State of California with its principal office in Los Angeles County, California and that its incorporators were Blanche V. Hudson, wife of the bankrupt, Merrill L. Granger and Philip Bloom. That at said time there was in force and effect an agreement between said Blanche V. Hudson and the bankrupt whereby she could engage in the construction business and her profits there from would be her sole and separate property.

III.

He denies each and every, all and singular, the allegations set forth in Paragraph IV of said Petition and in respect thereof alleges that said bankrupt has never had and does not now have any beneficial interest in said Pacific-Palmdale Development Company and further alleges that from and after about May 23rd, 1954, he the said bankrupt, was agent for said corporation in full charge of its affairs in relation to the actual performance of work in building and erecting said grain bins under a joint venture agreement existing between said Pacific-Palmdale Development Company and Lloyd R. Reeve, Incorporated, but without any authority to modify or waive any provision of such agreement.

IV.

He denies the allegations set forth in Paragraph

V of said Petition and in that respect alleges that on or about the 8th day of April, 1954, said Pacific-Palmdale Development Company and Lloyd R. Reeve, Incorporated, both corporations, entered into a contract in writing at Washington, D. C. containing, among other provisions, those which in their terms are substantially as follows:

(a) That Pacific-Palmdale Development Company, a corporation, without further consideration coming from said Lloyd R. Reeve, Incorporated, would make available the services of said bankrupt in procuring and performing contracts obtained for the purpose of erecting and making grain bins for the Commodity Credit Corporation under its 1954 program; [12]

(b) That Pacific-Palmdale Development Company, a corporation, was permitted under said agreement to engage Gene Wilbur as a public relations man and to engage Messrs. Liff & Kim, architects, for a compensation of not more than 10% of the profits to said Wilbur and not more than 5% of the profits to said Liff & Kim.

(c) That the balance of the profits were to be divided equally between said corporations;

(d) That within the limitations provided in said agreement, said Pacific-Palmdale Development Company, a corporation, could assign its interest in said agreement unto said John L. Hudson.

V.

He denies each and every, all and singular the allegations in Paragraphs VI, VII and VIII of said

Petition and in respect thereof alleges that on April 9th 1954, said Lloyd R. Reeve, Incorporated, a corporation, did submit bids to said Commodity Credit Corporation with the assistance and aid of the bankrupt provided by said Pacific-Palmdale Development Company, a corporation; that on April 17th, 1954 said bids were accepted in part by said Commodity Credit Corporation and it so notified said Lloyd R. Reeve, Incorporated, a corporation, which, on April 19th, 1954 did accept said partial acceptance of the Commodity Credit Corporation; that the bankrupt herein filed his petition herein on April 19th, 1954; that thereafter said contract with the Commodity Credit Corporation was substantially performed by said Lloyd R. Reeve, Incorporated, a corporation.

VI.

He denies the allegations of Paragraphs IX and X and in that respect alleges that with the consent of said *Palmdale Development* Company a corporation, and in accordance with the terms of its written assignment unto said John L. Hudson of the funds therein referred to, said Lloyd R. Reeve, Incorporated, paid unto said John L. Hudson for the account of said Pacific-Palmdale Development Company, a corporation, the sum of $15,000.00 on or about May 21st, 1954 and $5,000 or or about December 17th, 1954.

VII.

He admits the allegations of Paragraph XI of said Petition, except that [13] he denies that said sums are held by Lloyd R. Reeve, but are held by

said Lloyd R. Reeve, Incorporated, a corporation.

VIII.

He admits the allegations of Paragraph XII of said Petition.

IX.

He denies the allegations set forth in Paragraph XIII of said Petition.

X.

He admits the allegations set forth in Paragraph XIV of said Petition.

XI.

He denies the allegations of Paragraph XV of said Petition.

Wherefore each of the respondents prays that he be discharged:

s/ MERRILL L. GRANGER,
Attorney for Respondents [14]

Duly Verified. [15]

Acknowledgment of Service Attached. [16]

[Endorsed]: Filed Sept. 12, 1955.

[Title of District Court and Cause.]

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The matter of the Trustee's petition to require bankrupt to account of September 2, 1955 and order

to show cause and restraining order issuing thereunder having come on regularly for hearing before the undersigned Referee in Bankruptcy on September 14, 1955 at 2:00 o'clock P. M., the Trustee appearing by and through his counsel, Craig, Weller & Laugharn by William E. Bartley, and the Pacific Palmdale Development Company having filed a written answer and appearing by and through their counsel, Merrill L. Granger, and evidence, both oral and documentary, having been introduced and received in evidence and the matter being continued to September 15, 1955, at 10:00 o'clock A. M. and further evidence, both oral and documentary, having been introduced and received in evidence, and the matter being further continued to September 15, 1955 at 2:00 o'clock P. M., the Pacific Palmdale Development Company and John Lucas Hudson, Sr. having associated additional counsel, one William M. DeFalla, and further evidence, both oral and documentary, having been introduced [17] and received in evidence, and the matter having been further continued to September 22, 1955, at 10:00 A. M. and further evidence, both oral and documentary, having been introduced and received in evidence, and the Court being fully advised in the premises, the Court does make the following Findings of Fact, Conclusions of Law, and Order:

Findings of Fact

I.

That the within proceedings were commenced by the filing of a voluntary petition in bankruptcy on

April 19, 1954 and on April 19, 1954 the within bankrupt was duly adjudicated a bankrupt.

II.

That all times during the bankruptcy proceedings herein, Merrill L. Granger was and is the attorney of record for the bankrupt.

III.

That during the drafting of the articles of incorporation of the Pacific Palmdale Development Company and at all times thereafter, Merrill L. Granger was and is the attorney for the Pacific Palmdale Development Company.

IV.

That at all times since July 15, 1953, Merrill L. Granger was and is the personal attorney of John Lucas Hudson, Sr.

V.

That Merrill L. Granger drafted and drew the said articles of incorporation.

VI.

That at the time of the drawing of the articles of incorporation of the Pacific Palmdale Development Company, the said articles of incorporation were drawn for the specific [18] purpose of transacting the business of a land development program in Palmdale, California.

VII.

The proposed land development deal between the

bankrupt, John Lucas Hudson, Sr., and Philip Bloom in connection with which the Articles of Incorporation of the Pacific Palmdale Development Company were drawn and executed on March 9, 1954, was completely abortive. That on April 3, 1954, when the dormant Articles of Incorporation were filed with the Secretary of State, the Pacific Palmdale Development Company did not have or contemplate the acquisition of any assets or the transaction of any business save and except the joint venture deal between the bankrupt, John Lucas Hudson, Sr., and Lloyd R. Reeve, Inc., relating to the Commodity Credit Corporation of the United States of America. The incorporators of said Pacific Palmdale Development Company were Blanche V. Hudson, wife of the bankrupt, Merrill L. Granger, attorney for the bankrupt, and Philip Bloom, a friend of the bankrupt's son. That at the time of the drawing and executing of said Articles of Incorporation for use in connection with said land development project, the bankrupt used his wife and attorney for the purpose of concealing, circumventing and defrauding his then existing creditors. That when filing and using said Articles of Incorporation in connection with said Commodity Credit Corporation deal the bankrupt used said articles for the purpose of concealing, circumventing, and defrauding his then existing creditors. That said Philip Bloom, upon the failure of the proposed land development deal, had no further interest in said proposed corporation and never had or professed to have any interest in said Commodity

Credit Corporation deal, and shortly after said Articles of Incorporation were filed, to-wit: On April 12, 1954, resigned and withdrew from any connection he might of record have had with said ostensible corporation or transaction. [19]

VIII.

That the Articles of Incorporation of the Pacific Palmdale Development Company were executed by the incorporators on March 9, 1954.

IX.

That the said Articles of Incorporation were not filed with the office of the Secretary of State of the State of California until on or about April 3, 1954.

X.

That between the dates of the signing of said Articles of Incorporation and the date of the filing of the said Articles of Incorporation with the Secretary of State of the State of California, the bankrupt and/or his attorney Merrill L. Granger made a decision to change the purpose of the prospective corporation so that its principal business would be to transact business with Lloyd R. Reeve, Inc. by entering into a joint venture with Lloyd R. Reeve, Inc. whereby the Pacific Palmdale Development Company would make available to Lloyd R. Reeve, Inc. the peculiar knowledge and skill of the bankrupt to assist Lloyd R. Reeve, Inc. in the preparation and presentation of bids to the Commodity Credit Corporation of the United States of America

regarding the construction and erection of grain storage bins and whereby the Pacific Palmdale Development Company would furnish the services of the bankrupt to Lloyd R. Reeve, Inc. to assist Lloyd R. Reeve, Inc. in the performance of any such contracts awarded to Lloyd R. Reeve, Inc. in return for which said Lloyd R. Reeve, Inc. would share its profits from the said venture with the Pacific Palmdale Development Company.

XI.

That the Pacific Palmdale Development Company was organized on April 6, 1954 under the laws of the State of California with its principal office in Los Angeles County, [20] California and this is admitted by the answer of the bankrupt and by the answer of the Pacific Palmdale Development Company on file herein.

XII.

That the Pacific Palmdale Development Company is a California corporation and this is admitted by the answer of the bankrupt and the Pacific Palmdale Development Company on file herein.

XIII.

That the incorporators of the Pacific Palmdale Development Company were Blanche V. Hudson, wife of the bankrupt, Merrill L. Granger, attorney for the bankrupt, and Philip Bloom, the names of the incorporators are admitted by the answer of the bankrupt and of the Pacific Palmdale Development Company on file herein.

XIV.

That Philip Bloom, one of the incorporators, did not participate in the aforementioned grain storage bin transaction, was to receive no portion of the profits therefrom, had no interest therein, and did not give his consent or approval that the said Pacific Palmdale Development Company could be incorporated for the purpose of entering into any transaction in connection with grain storage bins.

XV.

That on April 12, 1954, the said Philip Bloom presented a written resignation and notice to the Pacific Palmdale Development Company, received a written acknowledgment of the receipt of the same, said resignation having been introduced herein as Respondent's Exhibit "E".

XVI.

That said Pacific Palmdale Development Company never at any time made any application to the Corporation Commission of the State of California for a permit to issue stock. [21]

XVII.

That the Pacific Palmdale Development Company never at any time issued any stock.

XVIII.

That no sums of money were ever contributed as capital of the Pacific Palmdale Development Company by the incorporators or by any other person

and the only sums expended by the incorporators or by any other person or persons in connection with the Pacific Palmdale Development Company were the nominal filing fees necessary to the incorporation of the said corporation.

XIX.

That on or about the 7th day of April, 1954, a contract in writing was entered into in Washington, D. C. by and between Lloyd R. Reeve, Inc. and the Pacific Palmdale Development Company containing, among other provisions, terms substantially as follows:

1 That Pacific Palmdale Development Company, a corporation, without further consideration coming from said Lloyd R. Reeve, Inc., would make available the services of the bankrupt in procuring and performing contracts obtained for the purpose of erecting and making grain bins for the Commodity Credit Corporation under its 1954 program.

2. That the Pacific Palmdale Development Company, a corporation, could assign its interest in and to the said agreement to the bankrupt who would discharge the obligations thereof.

XX.

That the within bankrupt conducted all of the negotiations with Lloyd R. Reeve, Inc. preliminary to the drafting of the aforementioned contract between Lloyd R. Reeve, Inc. and the Pacific Palmdale Development Company respecting grain storage bins.

XXI.

The within bankrupt made numerous [22] representations to Lloyd R. Reeve, Inc. and to the attorneys for Lloyd R. Reeve, Inc. to the effect that he was sole owner of the Pacific Palmdale Development Company.

XXII.

That the said contract of April 7, 1954 was executed by the bankrupt who designated himself as Treasurer of the Pacific Palmdale Development Company and indicated that the contract was executed for and on behalf of the Pacific Palmdale Development Company.

XXIII.

That the Minutes of the Pacific Palmdale Development Company of April 8, 1954, reflect a resolution whereby the within bankrupt is authorized to act as Treasurer of the Pacific Palmdale Development Company for the sole and limited purpose of executing the contract between Lloyd R. Reeve, Inc. and the bankrupt.

XXIV.

That prior to the execution of the aforementioned contract of April 7, 1954, the within bankrupt and Lloyd R. Reeve, Inc. had discussed and preliminarily agreed to substantially all the terms and provisions incorporated into the contract of April 7, 1954, save and except the contract was to be between the bankrupt and Lloyd R. Reeve, Inc. and the said preliminary agreement and the direct nego-

tiations between the bankrupt and Lloyd R. Reeve, Inc. omitted any reference to the Pacific Palmdale Development Company and clauses contained in the contract of April 7, 1954 relating to the Pacific Palmdale Development Company.

XXV.

That all negotiations relating to said Commodity Credit Corporation deal were had solely between the bankrupt, John Lucas Hudson, Sr., and Lloyd R. Reeve of Lloyd R. Reeve, Inc., prior to and after the filing of the Articles of Incorporation of Pacific Palmdale Development Company and prior to and after the execution [23] of the Joint Venture Agreement between Pacific Palmdale Development Company and Lloyd R. Reeve, Inc., which was executed in Washington, D.C. on or about April 7, 1954. That said bankrupt, John Lucas Hudson, Sr., and Lloyd R. Reeve went to Washington, D.C. in connection with the procurement of the contract from the Commodity Credit Corporation and while they were in Washington, D. C., the said bankrupt as Treasurer alone executed on behalf of Pacific Palmdale Development Company and said Lloyd R. Reeve as President alone executed on behalf of the Lloyd R. Reeve, Inc., the said Joint Venture Agreement on April 7, 1954. That thereafter on April 9, 1954, a bid was submitted to the Commodity Credit Corporation which was accepted on April 17, 1954. That said bankrupt, John Lucas Hudson, Sr., directly or indirectly received fifty (50%) percent of all of the moneys and profits

distributed by said joint venture through assignment and direction of said ostensible corporation. That it was contemplated by said bankrupt that after said bankruptcy proceedings were safely concluded that the 50% interest ostensibly owned by the Pacific Palmdale Development Company would be assigned outright to the bankrupt individually and paragraph 14 of said joint venture agreement expressly provides that "the second party may assign its interest in this agreement to the said John L. Hudson".

XXVI.

That prior to the negotiations leading to the execution of the contract of April 7, 1954, Lloyd R. Reeve, Inc. was unfamiliar with the construction of grain storage bins and became interested therein through the direct contact of the bankrupt and thereafter conducted all negotiations with respect thereto directly with the bankrupt, save and except the actual legal drafting of the aforementioned legal contract of April 7, 1954.

XXVII.

That on April 9, 1954, in Washington, D C., [24] Lloyd R. Reeve, Inc., a corporation, did submit bids to the Commodity Credit Corporation for the construction of grain elevator bins and was assisted by the bankrupt in the preparation of the said bids.

XXVIII.

That on April 17, 1954, said bids were accepted in part by the Commodity Credit Corporation and

on that date the Commodity Credit Corporation notified Lloyd R. Reeve, Inc. that 540 of such bids were accepted.

XXIX.

That on April 19, 1954, Lloyd R. Reeve, Inc. accepted the partial acceptance of the Commodity Credit Corporation and did so notify the commodity Credit Corporation.

XXX.

That the sole assets of the Pacific Palmdale Development Company were the aforementioned contract between Lloyd R. Reeve, Inc. and the Pacific Palmdale Development Company and the knowledge and skill of the within bankrupt.

XXXI.

That Blanche V. Hudson, one of the incorporators of the Pacific Palmdale Development Company, was at all times mentioned herein and for a great many years prior thereto had been the wife of the bankrupt, contributed nothing to the capital of the Pacific Palmdale Development Company, was a housewife with five children and had not business skill or experience and owned no separate assets, save and except an interest in some real property located in or near Portland, Oregon, which she claimed to be her separate property and contributed nothing to said corporation at any time.

XXXII.

That Merrill L. Granger, prior to the execution and performance of the aforementioned contract of April 7, 1954, had no special knowledge or skill

as concerned the construction or erection of grain storage bins, and had no special knowledge or [25] skill as regards the procurement of contracts from the Commodity Credit Corporation and had no special knowledge or skill as regards the construction business and contributed no capital to the said corporation.

XXXIII.

That prior to the incorporation of the Pacific Palmdale Development Company, Merrill L. Granger had represented the bankrupt as his attorney and had a fee arrangement with the bankrupt whereby he was to be paid a sum equivalent to 12% of the earnings of the bankrupt, not to exceed $40,000 in any one year.

XXXIV.

That it was agreed between the alleged directors of the Pacific Palmdale Development Company that Merrill L. Granger was to have a 12% interest in the Pacific Palmdale Development Company and it was agreed that the remaining interest in the Pacific Palmdale Development Company was to be divided between Blanche V. Hudson, the wife of the bankrupt, and William Hudson, the son of the bankrupt, so that each would own a 44% interest in and to the assets of the Pacific Palmdale Development Company.

XXXV.

That William Hudson never at any time contributed any funds or assets to the Pacific Palmdale

Development Company and in fact was employed in the performance of the contract of April 7, 1954 by Lloyd R. Reeve, Inc. as a superintendent on a salary basis and has received and collected all sums due him for his services rendered as such an employee.

XXXVI.

That Philip Bloom never at any time contributed anything to the capital of Pacific Palmdale Development Company other than a small sum for the nominal filing fees necessary to the incorporation of the said corporation. [26]

XXXVII.

That on April 20, 1954, the Board of Directors of the Pacific Palmdale Development Company passed a resolution which, among other things, contained a resolution that the first $50,000 derived from the aforementioned Lloyd R. Reeve, Inc. under the contract of April 7, 1954 be paid to the bankrupt, John Lucas Hudson, Sr.

XXXVIII.

That in fact all sums received by the Pacific Palmdale Development Company under the aforementioned contract of April 7, 1954 were immediately assigned to the bankrupt, John Lucas Hudson, Sr.

XXXIX.

That the bankrupt John Lucas Hudson, Sr., had for several years last past been in financial difficulties and had on March 17, 1953 made an assign-

ment for the benefit of his creditors. That at the date and time of entering into negotiations with Lloyd R. Reeve, Inc. and at the time of entering into the joint venture agreement on April 7, 1954, the bankrupt was and still is indebted to his creditors set forth in the schedules on file in these bankruptcy proceedings aggregating to the sum of $327,471.16. That there are no assets in said bankrupt estate with which to pay said creditors all or any part of their said claims. That at the time of entering into said joint venture agreement the parties contemplated making a profit of $240,000.00 and to secure additional contracts.

XL.

That on or about May 21, 1954, the within bankrupt was, without an assignment having been made by the Pacific Palmdale Development Company, paid the sum of $1,000 by Lloyd R. Reeve, Inc. on account of services allegedly rendered by the Pacific Palmdale Development Company under the aforementioned contract of April 7, 1954. [27]

XLI.

That on or about May 21, 1954, by and with the assignment of the Pacific Palmdale Development Company, the within bankrupt was paid the sum of $15,000 by Lloyd R. Reeve, Inc. on account of profits due under the aforementioned contract of April 7, 1954, and this is admitted by the answer of the Pacific Palmdale Development Company and by the answer of the bankrupt on file herein.

XLII.

That on or about December 17, 1954, the within bankrupt was paid $5,000, by and with the assignment of the Pacific Palmdale Development Company, by Lloyd R. Reeve, Inc. on account of profits due under the said contract of April 7, 1954, and this is admitted by the answer of the Pacific Palmdale Development Company and by the answer of the bankrupt on file herein.

XLIII.

That the Pacific Palmdale Development Company and the bankrupt did not contest the jurisdiction of this court in their written answer on file herein and did not at any time prior to September 15, 1955, after the matter had been heard for a full half day, make any objections to the jurisdiction of this Court.

XLIV.

That at all times herein mentioned, Merrill L. Granger, the attorney for the bankrupt, had actual knowledge that the bankrupt was insolvent, that the bankrupt had theretofore executed an assignment for the benefit of creditors, and that the creditors of the bankrupt had refused to release the bankrupt.

XLV.

That at all times herein mentioned, Merrill L. Granger, the attorney for the bankrupt, had consulted with the bankrupt and advised the bankrupt regarding his financial condition. [28]

XLVI.

That shortly prior to the incorporation of the Pacific Palmdale Development Company and prior to the filing of the petition in bankruptcy herein, Merrill L. Granger, the attorney for the bankrupt, did advise the bankrupt that he should not commit his services to anyone until he either had a release from his creditors or was adjudicated a bankrupt.

XLVII.

That the aforementioned contract of April 7, 1954, and the drafting thereof, were made and executed by and with the specific intent of the bankrupt, John Lucas Hudson, Sr., and his attorney, Merrill L. Granger, to hinder, delay, defraud and cheat the creditors of John Lucas Hudson, Sr., with specific knowledge on the part of John Lucas Hudson, Sr. and Merrill L. Granger that the said contract of April 7, 1954 would have the effect to hinder, delay, defraud and cheat the creditors of John Lucas Hudson, Sr. and the said contract of April 7, 1954 did have the actual effect of hindering, delaying, defrauding and cheating the creditors of John Lucas Hudson, Sr.

XLVIII.

That the incorporation of the Pacific Palmdale Development Company on April 6, 1954, and the filing of the articles of incorporation which resulted in said incorporation, were a part of a scheme of John Lucas Hudson, Sr. and his attorney, Merrill L. Granger, to hinder, delay, defraud and cheat creditors of John Lucas Hudson, Sr. and

were so intended by the said John Lucas Hudson, Sr. and Merrill L. Granger.

XLIX.

That Merrill L. Granger, the attorney for the bankrupt, was paid a total sum of $2,400 by the bankrupt out of the above referred to $15,000 and $5,000 payments received by the bankrupt from Lloyd R. Reeve, Inc. as profits from the [29] aforementioned contract of April 7, 1954, representing 12% of the sums so received.

L.

That the Pacific Palmdale Development Company filed Case No. 631386 in the Superior Court of California in and for the County of Los Angeles vs. Lloyd R. Reeve, Inc., a corporation, seeking an accounting under the aforementioned contract of April 7, 1954.

LI.

That the within bankrupt made no reference in any of his schedules on file herein to any interest in and to the Pacific Palmdale Development Company and made no reference to the said contract of April 7, 1954 and the bankrupt has never at any time amended his schedules so as to show any interest in and to said assets and this is admitted by the answer on file herein of the Pacific Palmdale Development Company and by the answer of the bankrupt.

Conclusions of Law

I.

That the Pacific Palmdale Development Com-

pany at all times since April 6, 1954 has been and still is a hollow shell and was and is controlled and dominated by John Lucas Hudson, Sr. and was and is the alter ego of John Lucas Hudson, Sr.

II.

That the aforementioned contract of April 7, 1954 was and is in fact a contract between John Lucas Hudson, Sr. and Lloyd R. Reeve, Inc.

III.

That the contract of April 7, 1954 and all sums realized thereunder accruing to the Pacific Palmdale Development Company or [30] to the bankrupt were the assets of this estate on April 19, 1954 and are still the assets of this estate.

IV.

That the aforementioned $2,400 paid by John Lucas Hudson, Sr. to Merrill L. Granger on April 19, 1954 was an asset of this estate at the time of payment and still is an asset of this estate.

V.

That Philip Bloom had no interest, had no ownership of, and had no right to claim any of the profits arising by and under the aforementioned contract of April 7, 1954 and has had no interest in and to any of the assets of the Pacific Palmdale Development Company since its incorporation.

VI.

Tht William Hudson had no interest, had no

ownership of, and no right to claim any of the profits arising by and under the aforementioned contract of April 7, 1954 and has had no interest in and to any of the assets of the Pacific Palmdale Development Company since its incorporation.

VII.

That Blanche V. Hudson had no interest, had no ownership of, and no right to claim any of the profits arising by and under the aforementioned contract of April 7, 1954 and has had no interest in and to any of the assets of the Pacific Palmdale Development Company since its incorporation.

VIII.

That if the Pacific Palmdale Development Company is allowed to proceed in Case No. 631386 in the Superior Court of the State of California in and for the County of Los Angeles, entitled the Pacific Palmdale Development Company vs. Lloyd R. Reeve, Inc., a corporation, irreparable harm would result to this estate and the said Pacific Palmdale Development Company should be permanently restrained and enjoined from proceeding in any manner [31] whatever in the aforementioned lawsuit.

IX.

That if Lloyd R. Reeve, Inc. were permitted to pay any further sums to Pacific Palmdale Development Company and/or the bankrupt, the said funds might be dissipated to the irreparable harm of this estate and the said Lloyd R. Reeve, Inc., a cor-

poration, should be permanently restrained and enjoined from paying any sums whatever under the contract of April 7, 1954 to the Pacific Palmdale Development Company and or the within bankrupt, John Lucas Hudson, Sr.

X.

That ~~the~~ Pacific Palmdale Development Company was incorporated due to the concerted action of Merrill L. Granger and John Lucas Hudson, Sr., the within bankrupt, with specific intent to hinder, delay, defraud and cheat creditors of John Lucas Hudson, Sr., the within bankrupt, and the said Merrill L. Granger and John Lucas Hudson, Sr. did conspire, aid and abet each other with the specific intent to accomplish such purpose.

XI.

That the aforementioned contract of April 7, 1954 by and between Lloyd R. Reeve, Inc. and the Pacific Palmdale Development Company was made in the name of the Pacific Palmdale Development Company rather than in the name of the bankrupt with the specific intent and purpose of Merrill L. Granger, the attorney for the bankrupt, and the bankrupt, John Lucas Hudson, Sr., to hinder, delay, defraud and cheat creditors of John Lucas Hudson, Sr., the within bankrupt, and to conceal assets from the said creditors.

XII.

That the Pacific Palmdale Development Company and the within bankrupt, John Lucas Hudson, Sr., by failure to present and object to the juris-

diction of this Court in their written answer on file herein and by proceeding with the matter [32] without objection during the hearings had on September 15, 1955, under Section 2a(7) of the Bankruptcy Act are deemed to have consented to the jurisdiction of this Court, and this Court therefore has jurisdiction over all matters relating to the petition of the Trustee on file herein.

XIII.

That Merrill L. Granger, by and through his conspiring, aiding and abetting John Lucas Hudson, Sr. in the above set forth scheme to hinder, delay, defraud and cheat creditors of John Lucas Hudson, Sr., is estopped to assert in this Court any interest in and to the assets of the Pacific Palmdale Development Company or any assets arising by virtue of the aforementioned contract of April 7, 1954, including the sum of $2,400 received by him from the bankrupt from funds paid by Lloyd R. Reeve, Inc. to the bankrupt.

XIV.

That through failures of the Pacific Palmdale Development Company and its officers, directors, and ostensible shareholders to contribute any capital whatsoever to said corporation, other than a contract calling for the personal services of the within bankrupt, failure to secure or apply for a permit to issue capital stock, failure to issue any capital stock, failure to even inform Philip Bloom, one of the incorporators, of the actual purpose for

which the corporation was incorporated, the Referee concludes as a matter of law that said John Lucas Hudson, Sr. not only influenced and governed the Pacific Palmdale Development Company but that there is such a unity of interest and ownership between the said John Lucas Hudson, Sr. and the Pacific Palmdale Development Company that the individuality or separateness of said John Lucas Hudson, Sr. and the Pacific Palmdale Development Company has ceased to exist and the facts are such that an adherence to the fiction of the separate existence of the corporation would under the circumstances of this action sanction a fraud or promote an injustice, and it is hereby found that the Pacific Palmdale Development Company has no existence whatever separate and apart from John Lucas Hudson, Sr.

Order

It Is Hereby Ordered that John Lucas Hudson, Sr., the within bankrupt, is hereby permanently enjoined and restrained from in any manner proceeding with that certain action in the Superior Court of the State of California in and for the County of Los Angeles entitled the Pacific Palmdale Development Company, a corporation, vs. Lloyd R. Reeve, Inc., a corporation, Case No. 631386;

It Is Further Ordered that the Pacific Palmdale Development Company is hereby permanently enjoined and restrained from in any manner proceeding with the above set forth Los Angeles County Superior Court action;

It Is Further Ordered that the within bankrupt, John Lucas Hudson, Sr., is permanently enjoined and restrained from receiving any funds from the Pacific Palmdale Development Company, a corporation, receiving any funds from Lloyd R. Reeve, Inc., a corporation, arising in connection with the aforementioned contract of April 7, 1954, and is further restrained from taking any action whatever or receiving any funds arising in connection with the aforementioned contract of April 7, 1954;

It Is Further Ordered that Lloyd R. Reeve, Inc., a corporation, is hereby permanently enjoined and restrained from paying any funds over to the Pacific Palmdale Development Company or to John Lucas Hudson, Sr. arising out of or in connection with the aforementioned contract of April 7, 1954;

It Is Further Ordered that Merrill L. Gran- [34] ger is permanently enjoined and restrained from in any manner proceeding in and with the aforementioned Los Angeles Superior Court action of Pacific Palmdale Development Company vs. Lloyd R. Reeve, Inc. and from in any manner proceeding in any action in the State Courts of California on any matters arising by, under, or by virtue of the aforementioned contract of April 7, 1954;

It Is Further Ordered that the trustee is hereby authorized and empowered to substitute himself as plaintiff in the aforementioned action of Pacific Palmdale Development Company vs. Lloyd R. Reeve, Inc.;

It Is Further Ordered that the trustee is hereby authorized and empowered to take any further

action he may deem necessary either by summary or plenary proceedings against Lloyd R. Reeve, Inc., John Lucas Hudson, Sr., the within bankrupt, the Pacific Palmdale Development Company, and/or Merrill L. Granger;

It Is Further Ordered that all assets arising by, under or by virtue of the contract of April 7, 1954, whether prior or future, are assets of this estate and that Philip Bloom, Blanche V. Hudson, William Hudson, the Pacific Palmdale Development Company, and/or Merrill L. Granger have no right, title, and interest whatever in and to the said assets;

It Is Further Ordered that John Lucas Hudson, Sr., the within bankrupt, is indebted to this estate in the sum of $21,000.00.

Dated: December 6th, 1955.

/s/ JOSEPH J. RIFKIND
Referee in Bankruptcy [35]

[Endorsed]: Filed December 6, 1955.

[Title of District Court and Cause.]

RESPONDENTS' OBJECTIONS TO PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Come now John Lucas Hudson, Sr., the bankrupt above named and Pacific Palmdale Development Company, a corporation, Respondents herein and by

way of objection to the Trustee's Proposed Findings of Fact, Conclusions of Law and Order, respectfully state:

I.

They object to proposed Finding of Fact VII as being contrary to and not supported by the evidence in the following respects: (a) said Articles of Incorporation were not completely abortive in that said corporation did function in the joint venture deal, (b) the Palmdale Building deal was not divorced from said planned corporation until after it obtained a proposal of contract from the Commodity Credit Corporation and (c) there was never any plan or attempt to delay, defraud or circumvent any creditors of said John Lucas Hudson, Sr. or avoid the payment of their claims other than a plan to obtain a release from said creditors or a discharge in bankruptcy in accordance with the doctrine approved in re Leibowitt, 93F2nd333, 115 ALR 623, (3rd Circuit) cited with approval in the 9th Circuit in Miller v. Wooley, 141 F2nd 837, at 839.

II.

Finding XXIII is purely evidenciary and presents no finding of fact. [36]

III.

Proposed Finding XXIV is only evidenciary and does not present a finding of any material ultimate fact and is contrary to the evidence and the law in that no work was done under an oral agreement, but all work was done under a written agreement and

oral negotiations prior to April 7th, 1954 were merged in the written agreement of that date between Lloyd R. Reeve, Incorporated and Pacific Palmdale Development Company.

IV.

Finding XXV, in its last sentence is not supported by the evidence and is uncertain and ambiguous, except the following: "paragraph 14 of said joint venture agreement expressly provides that "the second party may assign its interest in this agreement to the said John L. Hudson".

V.

Finding XXX is uncertain and indefinite, not supported by the evidence and contrary to the evidence in that the evidence, without contradiction shows that between April 6th and April 19th, 1954 the only asset of Pacific Palmdale Development Company was its contract of April 7th, 1954 with said Lloyd R. Reeve, Incorporated and its only asset acquired after April 19th, 1954, other than possible profit from said contract, was its contract of May 3rd, 1954 with John Lucas Hudson, Sr.

VI.

Finding XXXIII is not supported by the evidence and is contrary to the evidence in that the uncontradicted testimony is to the effect that the fee arrangement of 12% of earnings between the bankrupt and Merrill L. Granger was made after the bankrupt's return from Washington, D. C. on April

9th, 1954 or thereabouts, and that the maximum was to be $40,000.00 whether in one or more years.

VII.

Finding XXXIX, in its last sentence is rendered uncertain and unintelligible by its last four words "with secure additional contracts".

VIII.

Finding XL is contrary to the evidence and not supported by the evidence in that said $1,000.00 was not paid unto said respondent's or either of them on account of the services of said John Lucas Hudson Sr., but was a refund of expenses. [37]

IX.

Proposed Finding XLVI is contrary to the evidence and not supported by the evidence in that the only evidence on the subject was to the effect that said Merrill L. Granger informed the said bankrupt that unless he had a release from his creditors or a discharge in bankruptcy any accumulations of his earnings intended by the bankrupt as a means of rehabilitating himself financially would be subject to the demands of his creditors.

X.

Proposed Finding XLVII is contrary to and not supported by the evidence and is contrary to law in that (a) a bankrupt, as against his existing creditors is entitled to plan to avail himself of the benefits of a bankruptcy proceedings and to preserve to himself his earnings after adjudication under the doctrine

set out in Leibobitt bankruptcy matter (supra), in re Thomas 204 Fed 2nd 788; in re Mittleman 123 Fed 2nd 703 and (b) the trustee not being entitled to the bankrupt's earnings after adjudication, his creditors cannot be defrauded of something they were never entitled to and damage does not concur with a fraud under the doctrine set forth in Gonsalves v Hodgson, 28 Cal 2nd 91, 237 Pac 2nd 656; Gagne v Bertram (Cal) 264 Pac 2nd 641, 275 Pac 2nd 15; Gerini v Pac. Employment Ins. Co. 27 CA 2nd 52, 80 Pac 2nd 489, and 27 CA 2nd, 767, 80 Pac 2nd 502; U. S. vs Arredondo 31 U. S. 691, 6 Pet 691, 8 L Ed 547; U.S. vs. Dunn 45 S Ct 451, 268 U.S. 121, 69 L Ed 876; U.S. vs North Pac Ry Co 188 Fed 2nd 277; Ward v Deavers 203 Fed 2nd 72 and Dabney vs Levy 191 Fed 2nd 201.

XI.

Proposed Finding XLVIII is contrary to and not supported by the evidence and is contrary to law for the reasons set forth in Paragraph X above.

XII.

There should be added to said Findings the following with reference to material issues:

(a) It is true that said Philip Bloom continued to act on behalf of said Pacific Palmdale Development Company, a corporation, in connection with its proposed Palmdale building program, after April 20, 1954.

(b) It is true that at all times mentioned in this proceedings, the [38] bankrupt, John Lucas Hud-

son, Sr. was a married man living with his wife and minor children in the State of California.

(b) It is true that the only thing provided by said John Lucas Hudson, Sr. or said Pacific Palmdale Development Company or both of them to said Lloyd R. Reeve, Incorporated under the contract of April 7th, 1954, was the personal service of said John Lucas Hudson, Sr. (Future salary of a married man is not assignable under Section 300 and 303 of the Labor Code of California and under the doctrine of Reynolds v Reynolds 14 CA 2nd 481, citing Kirkwood v Soto 87 Cal 394, any form of compensation for personal services is "wages" and "salary" as employed in the Constitution of California whether payable in a fixed sum of money or in fees. Therefore, future salary does not pass to a trustee in bankruptcy).

(c) It is true that the personal services of said John Lucas Hudson, Sr. were performed before and after the adjudication of John Lucas Hudson, Sr. as a bankrupt on April 19th, 1954.

(d) It is not true that the personal services of said John Lucas Hudson, Sr. performed under said contract of April 7th, 1954, but prior to April 19th, 1954, and those performed by him thereunder after April 19th, 1954, are reasonably divisible into their respective percentages of the entire of said personal services.

(e) It is not true that said John Lucas Hudson, Sr. at any time on or prior to April 19th, 1954 had any interest in any existing sum accruing under or on account of his said personal services.

(f) It is not true that Blanche V. Hudson, wife of said bankrupt, ever consented to any assignment by him of any compensation to be paid to him on account of his personal services performed by him for said Lloyd R. Reeve, Incorporated, on said grain bin deal, either orally or in writing.

(g) It is true that a substantial portion of the personal services performed by said John Lucas Hudson, Sr., for said Lloyd R. Reeve, Incorporated, in connection with said grain bin deal, was performed after April 19th, 1954.

XIII.

Proposed Conclusions of Law, except V, are contrary to law and the evidence.

/s/ MERRILL L. GRANGER,
Attorney for Respondents [39]

Affidavit of Service by Mail Attached. [40]

[Endorsed]: Filed Dec. 6, 1955.

[Title of District Court and Cause.]

PETITION FOR REVIEW

To Honorable Joseph J. Rifkind, Referee in Bankruptcy:

The Petition of John Lucas Hudson, Sr. and Pacific Palmdale Development Company, a corporation, Respondents, respectfully represents:

1. Your petitioners and each of them are ag-

grieved by the Order herein of Honorable Joseph J. Rifkind, Referee in Bankruptcy, dated December 6th, 1955, a copy of which order, with the Findings of Fact and Conclusions of Law on which it is based, is annexed hereto, marked "Exhibit A" and made a part hereof.

2. The Referee erred with respect to said Order as follows:

I. Finding of Fact VII is contrary to and not supported by the evidence in that:

(a) On April 3, 1954 Philip Bloom and the other incorporators of Pacific Palmdale Development Company did contemplate that said corporation would be used for the medium of a land development program near Palmdale, California.

(b) There is no evidence whatever that the bankrupt filed or used the Articles of Incorporation of Pacific Palmdale Development Company in connection with the Commodity Credit Corporation deal or that [41] he used them to conceal, circumvent or defraud his then existing creditors or that he used his wife or attorney to conceal, circumvent or defraud his creditors.

(c) Philip Bloom is shown, without contradiction, to have continued to act on behalf of Pacific Palmdale Development Company in connection with the land development program at Palmdale, California, as late as April 25th, 1954.

II. Finding of Fact XXIV is not supported by the evidence and is contrary to the evidence and the

law in that oral negotiations for a contract are deemed merged into a later written contract covering the same subject matter and the uncontradicted evidence shows that the work done on the grain bin deal by the parties to the joint venture agreement was done under the written contract of April 7th, 1954 and not under an oral contract.

III. Finding of Fact XXV is not supported by the evidence in that there was no evidence whatever to the effect that it was intended by the bankrupt to have assigned to him the interest of Pacific Palmdale Development Company in the joint venture agreement on the grain bin deal after a safe or any other conclusion of this bankruptcy proceeding.

IV. Finding of Fact XXX is not supported by and is contrary to the evidence in that uncontradicted testimony is to the effect that the only asset Pacific Palmdale Development Company has prior to April 19th, 1954 was its joint venture agreement with Lloyd R. Reeve, Inc. and the only assets it acquired after April 19th, 1954 were the agreement of May 3rd, 1954 for the bankrupt's personal services and profits coming from the grain bin deal under the joint venture agreement.

V. Finding of Fact XXXIII is contrary to the evidence which shows that under the fee arrangement between the bankrupt and Merrill L. Granger, said Merrill L. Granger was to receive the equivalent of 12% of the bankrupt's future earnings until

an indeterminate amount approximating $10,000 was paid, whether in one or more years.

VI. Finding of Fact XL is not supported by the evidence in that [42] the evidence does not show that any part of said sum of $1,000 was paid to the bankrupt as profit under said joint venture agreement and said Finding is contrary to the evidence in that both the bankrupt and Pacific Palmdale Development Company are entitled to the bankrupt's earnings after his adjudication.

VII. Finding of Fact XLV is not supported by the evidence and is contrary to the evidence which is solely to the effect that the only statement made to the bankrupt by Merrill L. Granger relating to the bankrupt's finances was to the effect that accumulations of the bankrupt's personal earnings would be subject to the demands of his creditors unless he obtained a release from them or a discharge in bankruptcy.

VIII. Finding of Fact XLVI is contrary to the evidence and is not supported by the evidence for the same reason assigned to Finding of Fact XLV in Paragraph VII next above.

IX. Finding of Fact XVII is not supported by the evidence and is contrary to the evidence for the following reasons:

(a) All profits or distributions coming to Pacific Palmdale Development Company and the bankrupt

are compensation for the bankrupt's future personal services and are not assignable to his trustee in bankruptcy under California law in that the same comprises wages or salary;

(b) All the services performed by the bankrupt under either said joint venture agreement or his agreement with Pacific Palmdale Development Company were paid for by and from a fund which did not come into existence until after April 19th, 1954;

(c) The bankrupt performed substantial services on the grain bin deal after his adjudication;

(d) The services performed by the bankrupt on the grain bin project are not reasonably divisible into the proportions of the whole which were performed before and after April 19, 1954.

X. Said Finding of Fact wholly fail to find with reference to evidence which, without contradiction, tends to establish the following material facts: [43]

(a) That at the time of the filing of the Petition in Bankruptcy herein and his adjudication, the bankrupt was a married man living with his wife and minor children in the State of California;

(b) The bankrupt's wife has never joined in nor consented to any assignment by the bankrupt to his Trustee herein of his future earnings or any part thereof;

(c) All sums paid to the bankrupt or to Pacific Palmdale Development Company under the joint venture agreement with Lloyd R. Reeve, Inc. in connection with the grain bin deal were paid only in consideration of personal services performed by the

bankrupt or to refund for his expenses such expenses being incurred after April 19th, 1954.

(d) All payments made to the bankrupt or to Pacific Palmdale Development Company by Lloyd R. Reeve, Inc. under said joint venture agreement covering the grain bin deal were made from a fund which did not come into existence until after April 19th, 1954.

(e) The services performed by the bankrupt on said grain bin deal were performed both before and after April 19th, 1954, a substantial proportion of the whole of such services having been performed after April 19th, 1954.

(f) The services performed by the bankrupt on said grain bin deal are not reasonably divisible into the proportions of the whole which were performed before and after April 19th, 1954.

XI. Each of the Conclusions of Law, except V and XII are contrary to law in the following respects:

(a) None of the compensation paid for the personal services of the bankrupt under said joint venture agreement covering the grain bin deal belong to his trustee in bankruptcy;

(b) The trustee and creditors of the bankrupt cannot be cheated or defrauded or their rights postponed or delayed in respect to an asset to which they are not entitled;

(c) A corporation cannot be held to be the alter ego of an individual or individuals except when nec-

essary to avoid a fraud or [44] inequitable result from recognition of the corporate entity.

XI. The Referee's Order entered December 6th, 1955 is not supported by the evidence and is contrary to law, all as above set forth.

3. It is respectfully requested that the Referee certify unto a judge of this the record relating to said Order, including a transcript by the reporter of all evidence which has heretofore been prepared.

Wherefore your petitioners pray that said Order be reviewed by a Judge in accordance with the provisions of the Act of Congress relating to bankruptcy, that said Order be reversed and these petitioners discharged.

PACIFIC PALMDALE DEVELOPMENT COMPANY, a corporation

/s/ By BLANCHE V. HUDSON,
President

/s/ JOHN LUCAS HUDSON, SR.,
Petitioners

/s/ MERRILL L. GRANGER,
Attorney for Petitioners [45]

[Note: Exhibit A is a duplicate of Findings of Fact, Conclusions of Law, and Order set out at pages 16-40 of this printed record.]

Affidavit of Service by Mail Attached. [62]

[Endorsed]: Filed Dec. 9, 1955.

[Title of District Court and Cause.]

REFEREE'S CERTIFICATE ON REVIEW OF ORDER OF DECEMBER 6, 1955

To the Honorable William C. Mathes, Judge of the United States District Court, Southern District of California, Central Division:

The undersigned, Joseph J. Rifkind, a Referee in Bankruptcy of the above-entitled court, does hereby certify as follows:

Statement of Case

The trustee in bankruptcy filed a petition to have the Pacific Palmdale Development Company, a corporation, declared to be the alter ego of the bankrupt John Lucas Hudson, Sr., the proceeds and profits heretofore paid and hereafter to be received under the Joint Venture Agreement of April 7, 1954, between the Pacific Palmdale Development Company and Lloyd R. Reeve, Inc. to be assets of the bankrupt estate, to restrain the prosecution of an action by Pacific Palmdale Development Co. against Lloyd R. Reeve, Inc. and for an accounting. The court determined that Pacific Palmdale Development Company, a corporation, was the alter ego of the bankrupt, that all profits realized [63] and to be realized under the Joint Venture Agreement between Pacific Palmdale Development Company dated April 7, 1954, were assets of the bankrupt estate, restraining the pending action and providing for an accounting. The bankrupt and the

Pacific Palmdale Development Company have filed a Petition for Review from the Findings of Fact, Conclusions of Law, and Order, dated December 6, 1955.

Summary of the Evidence

The following is a summary of the evidence introduced at the hearing, to wit:

The bankrupt for several years has had financial difficulties resulting in an assignment for the benefit of his creditors on March 17, 1953, followed by his filing of a Petition in Bankruptcy on April 19, 1954. William A. Wylie was appointed trustee in bankruptcy on May 10, 1954. The matter proceeded as a no asset estate until the concealment hereafter referred to was brought to the trustee's attention about a year and a half after the bankruptcy proceedings were filed, at which time the trustee employed counsel and instituted the proceedings herein for the recovery of assets alleged to have been concealed by the bankrupt through the instrumentality of an alter ego corporation.

The bankrupt, in the latter part of March and the early part of April 1954, entered into and concluded negotiations with one Lloyd R. Reeve, whereby they would enter into a joint venture agreement for the purpose of securing a contract from the Commodity Credit Corporation of the United States of America. The bankrupt caused such joint venture contract to be executed in the name of Pacific Palmdale Development Corporation for the purpose of concealing his interest in

such contract from his creditors. The Articles of Incorporation of the Pacific Palmdale Development Corporation were executed by Blanche V. Hudson, wife of the bankrupt, Merrill L. Granger, attorney for the bankrupt, and [64] Philip Bloom, a friend of the bankrupt's son, on March 9, 1954. The Articles of Incorporation of the Pacific Palmdale Development Corporation were drawn and executed in connection with a real estate development deal between the bankrupt and said Philip Bloom.

The real estate deal was never culminated and the Articles of Incorporation were not filed with the Secretary of State until April 3, 1954, when the bankrupt conceived the idea of using such dormant Articles of Incorporation in connection with his joint venture deal with Lloyd R. Reeve, relating to procurement of a contract from the Commodity Credit Corporation to erect a grain bin.

Mr. Bloom did not authorize nor did he know that the Articles of Incorporation were filed on April 3, 1954. Mr. Bloom, upon the failure of the proposed land development deal, had no further interest in the proposed corporation, never had or professed to have any interest in the Commodity Credit Corporation deal and shortly after the Articles of Incorporation were filed, namely on April 12, 1954, resigned and withdrew from any connection he might of record appear to have with said ostensible corporation or the transaction. Thereupon the bankrupt's son, William Hudson, was substituted as a director and officer of such corporation.

The corporation never made application to the commissioner of the corporation to issue and it never did issue any stock. That neither Blanche V. Hudson, the bankrupt's wife, William Hudson, the bankrupt's son, Merrill L. Granger, the bankrupt's attorney, nor any one else ever contributed any working capital or any money to said corporation save and except the nominal sum necessary for filing fees of said Articles of Incorporation with the Secretary of State.

Blanche V. Hudson, designated as one of [65] the incorporators, directors and an officer of said Pacific Palmdale Development Corporation, has for a great many years been the wife of the bankrupt, was a housewife with five children, who had no business skill or experience, was dependent upon the bankrupt for support, had no independent income, possessed no separate property except an interest in a parcel of real property in Portland, Oregon, which the bankrupt had assigned to her before making an assignment for the benefit of creditors and the filing of his bankrupt proceedings.

Merrill L. Granger, another incorporator, director and officer of the Pacific Palmdale Development Corporation, had been the attorney for the bankrupt for several years, was familiar with the bankrupt's financial difficulties and filed the bankruptcy proceedings on behalf of the bankrupt and represented him therein. Merrill L. Granger only contributed his legal services and was to receive twelve (12%) per cent of the bankrupt's profits from the deal, up to a certain amount.

William Hudson, the bankrupt's son, had no income or means except the nominal wages he received for his services while working for his father or others.

That all of the negotiations relating to said Commodity Credit Corporation deal were conducted solely between the bankrupt, John Lucas Hudson, Sr. and Lloyd R. Reeve of Lloyd R. Reeve, Inc. prior to and after the filing of the Articles of Incorporation of Pacific Palmdale Development Corporation. That all negotiations prior to and after the execution of the Joint Venture Agreement between the Pacific Palmdale Development Company and Lloyd R. Reeve, Inc. on or about April 7, 1954, were carried on by the said bankrupt, John Lucas Hudson, Sr.

That all of the terms and conditions of the Joint Venture Agreement were discussed, formulated and agreed upon between the bankrupt John Lucas Hudson and Lloyd R. Reeve in Los Angeles on or about April 5, 1954. That therefore the bankrupt flew to Washington, D.C. to further the procurement of the contract from the Commodity Credit Corporation. That Merrill L. Granger, as attorney for the bankrupt prepared the joint venture agreement after the bankrupt flew to Washington, D.C. in accordance with terms and conditions previously agreed upon between the bankrupt and Lloyd R. Reeve. That Lloyd R. Reeve picked up or caused to be picked up the agreement which Merrill L. Granger had prepared and flew to Washington, D.C. to join the bankrupt. That while said John

Lucas Hudson, Sr. and Lloyd R. Reeve were both in Washington, D.C. in connection with the procurement of the contract from the Commodity Credit Corporation, the said joint venture agreement was executed by them on or about April 7, 1954. That said bankrupt alone executed said venture agreement on behalf of the Pacific Palmdale Development Company and said Lloyd R. Reeve executed the same on behalf of Lloyd R. Reeve, Inc.

That said joint venture agreement executed on or about April 7, 1954, provided that all of the net profits were to be divided equally between the Pacific Palmdale Development Company and Lloyd R. Reeve, Inc.

That it was contemplated by said bankrupt after said bankruptcy proceedings had been concluded and he had procured his discharge that the fifty (50%) per cent interest in the joint venture agreement should be assigned outright by the Pacific Palmdale Development Company to the bankrupt. That paragraph 14 of the joint venture agreement expressly provides that "the second party (Pacific Palmdale Development Company) may assign its interest in this agreement to the said John L. Hudson." Matter in parenthesis added.

That after the execution of said joint venture agreement between Pacific Palmdale Development Company and Lloyd R. Reeve, Inc. [67] on April 7, 1954, in Washington, D.C. to wit on April 9, 1954, a bid was submitted to the Commodity Credit Corporation which was accepted on April 17, 1954. That thereafter and on April 19, 1954, the bank-

ruptcy proceedings were filed by said John L. Hudson through his said attorney, Merrill L. Granger. That at the time of entering into said joint venture agreement, the said John Lucas Hudson and the said Lloyd R. Reeve, contemplated making a profit of $240,000.00 and the securing of additional contractors.

That all sums to be received by the Pacific Palmdale Development Company, under the aforesaid joint venture agreement executed on April 7, 1954, were immediately assigned by said corporation to the bankrupt. That said bankrupt has in fact directly or indirectly received all money accruing to said corporation under said joint venture agreement. That said bankrupt has to date received the sum of $21,000.00 pursuant to said joint venture agreement, out of which his attorney, Merrill L. Granger has received $2,400.00. That Lloyd R. Reeve, Inc. now has on hand the sum of $46,000.00 out of which Pacific Palmdale Development Company is entitled to receive the sum of $23,000.00.

That said bankrupt, on the date and at the time of entering into negotiations with Lloyd R. Reeve, Inc., and at the time of entering into the joint venture agreement on April 7, 1954, was and still is indebted to his creditors set forth in the schedules on file in these bankruptcy proceedings aggregating the sum of $327,471.16. That there are no assets (except $147.00) in said bankrupt estate with which to pay said creditors all or any part of their said claims.

Findings of Fact and Conclusions of Law

The findings of fact and conclusions of law are incorporated in the said Order of December 6, 1955. [68]

Questions Presented

1. Are the Findings of Fact, Conclusions of Law, and Order of December 6, 1955, supported by the evidence?

2. Is the Pacific Palmdale Development Company the alter ego of the bankrupt?

3. Are all profits realized by the Pacific Palmdale Development Company under the aforementioned joint venture agreement of April 7, 1954, assets of this estate?

Documents Accompanying This Certificate

The undersigned hereby certifies the following documents from his file:

(a) Petition and Schedules filed by the bankrupt on April 19, 1954. (By reference, incorporated and made part of this Certificate of Review the Petition and schedules filed by the bankrupt with the United States District Court Clerk).

(b) Order appointing William A. Wylie, trustee, dated May 10, 1954.

(c) Petition to Require Bankrupt to Account, etc. filed by trustee on September 8, 1955.

(d) Order to Show Cause and Restraining Order, dated September 8, 1955.

(e) Answer of bankrupt and Pacific Palmdale Development Company.

(f) Findings of Fact, Conclusions of Law, and Order, dated December 6, 1955.

(g) Reporter's Transcript of Proceedings of September 14, 1955.

(h) Reporter's Transcript of Hearings of September 19, 1955 and September 22, 1955. [69]

(i) Trustee's Exhibits Numbered 1, 2 and 3.

(j) Respondents' Exhibits "A", "B", "C", "D", "E", "F", "G", "H", "I", "J".

(k) Petition for Review, dated December 8, 1955.

(l) Notice for Filing Certificate of Review.

Dated: December 30, 1955.

Respectfully submitted,

/s/ JOSEPH J. RIFKIND
Referee in Bankruptcy [70]

[Title of District Court and Cause.]

NOTICE OF FILING CERTIFICATE OF REFEREE ON REVIEW OF ORDER OF DECEMBER 6, 1955

To: Merrill L. Granger, Esq., 422 Wilshire Blvd., Santa Monica, Calif., Attorney for Bankrupt and Pacific Palmdale Development Co., a Corporation, Messrs. Craig, Weller & Laugharn, 111 W. Seventh Street, Los Angeles 14, Calif., Attorneys for Trustee in Bankruptcy.

Notice is hereby given that the undersigned Referee in Bankruptcy has this day filed with the clerk

of the above-entitled Court his Certificate on Review of the Order of December 6, 1955.

Dated: December 30, 1955.

/s/ JOSEPH J. RIFKIND,
Referee in Bankruptcy [71]

[Endorsed]: Filed December 29, 1955.

In the United States District Court, Southern District of California, Central Division

In Bankruptcy No. 60798-WM

In the Matter of

JOHN LUCAS HUDSON, SR., Bankrupt.

ORDER ON REVIEW OF REFEREE'S ORDER OF DECEMBER 6, 1955

Upon the petition for review filed December 9, 1955 on behalf of the bankrupt and Pacific Palmdale Development Company, a corporation; upon the certificate of Referee Joseph J. Rifkind filed December 29, 1955; and upon the proceedings had before the Referee as appear from his certificate;

It Is Now Ordered that the Referee's order of December 6, 1955 is hereby confirmed.

It Is Further Ordered that the Clerk this day serve copies of this order by United States mail on (1) Referee Joseph J. Rifkind;

(2) The attorney for the petitioners; and

(3) The attorneys for the trustee in bankruptcy.

February 8, 1956.

/s/ WM. C. MATHES,
United States District Judge [72]

[Endorsed]: Filed Feb. 9, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that John Lucas Hudson, Sr., the bankrupt above named, and Pacific-Palmdale Development Company, a corporation, appeal to the United States Circuit Court of Appeals (Ninth Circuit) from the Order of Honorable William C. Mathes, United States District Judge, made in the above entitled matter on February 8, 1956 and filed and entered February 9th, 1956, confirming the decision and Order of Referee Joseph J. Rifkind herein made and entered on December 6, 1955.

/s/ MERRILL L. GRANGER,
Attorney for Appellants [73]

Affidavit of Service by Mail Attached. [74]

[Endorsed]: Filed Mar. 9, 1956.

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 77, inclusive, contain the original

Petition to Require Bankrupt to Account;

Order to Show Cause and Restraining Order;

Answer of Bankrupt;

Findings, of Fact, Conclusions of Law, and Order;

Respondents' Objections to Proposed Findings, etc.;

Petition for Review;

Referee's Certificate on Review of Order of December 6, 1955;

Notice of Filing Certificate of Referee on Review of Order of December 6, 1955;

Order on Review of Referee's Order of December 6, 1955;

Notice of Appeal;

Appellants' Designation of Record on Appeal;

which, together with Trustee's exhibits 1, 2 and 3 and Respondents' exhibits A, C, D, E, F, G, H, I and J, and 2 volumes reporter's transcript, all in the above-entitled cause, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above case.

I further certify that my fees for preparing the

foregoing record amount to $2.00, which sum has been paid by appellant.

Witness my hand and the seal of the said District Court this 17th day of April, 1956.

[Seal] JOHN A. CHILDRESS,
Clerk

/s/ By CHARLES E. JONES,
Deputy

In the United States District Court, Southern District of California, Central Division

In Bankruptcy No. 60,798-WM

In the Matter of:

JOHN LUCAS HUDSON, SR., Bankrupt.

HEARING RE: ORDER TO SHOW CAUSE; TRUSTEE VS. BANKRUPT

Before: Honorable Joseph J. Rifkind, Referee in Bankruptcy.

The following is a stenographic transcript of the proceedings in the above-entitled matter, which came on for hearing before the Honorable Joseph J. Rifkind, United States Referee in Bankruptcy, at his courtroom, 330 Federal Building, Los Angeles, California, at the hour of 2:00 o'clock p.m., on Wednesday, September 14, 1955.

Appearances of Counsel: For the Trustee: Craig, Weller & Laugharn, By: William E. Bartley, Esq. For the Bankrupt and Pacific Palmdale Development Co.: Merrill L. Granger, Esq. [1*]

The Referee: The matter of John Lucas Hudson, Sr., order to show cause of the Trustee against the Bankrupt.

Mr. Bartley: That matter will take approximately an hour, your Honor.

The Referee: Very well.

Mr. Granger: We are ready for the respondent, your Honor.

The Referee: Before we take up the John Lucas Hudson matter, which appears to be quite a lengthy matter, let us see if we can dispose of Referee Hunt's calendar.

(Whereupon other matters on the calendar were heard by the Referee.)

The Referee: We will proceed now with the John Lucas Hudson matter.

Gentlemen, let me state to you that I have read the petition and the order to show cause, and I am familiar with it, so proceed upon that assumption.

No answer is in the file. I am just wondering if an answer has been served and filed, but not gotten into the file yet.

Mr. Granger: The order required it to be filed one day before this day. It was filed yesterday.

Mr. Bartley: I have a carbon copy of the answer,

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* Page numbering appearing at top of page of original certified Reporter's Transcript.

which [2] was served on the Trustee. Mr. Granger, do you have an extra copy?

Mr. Granger: Yes, I do have.

I might say, your Honor, that perhaps this proceeding can be shortened, if counsel so desires, and to that end I would make the statement that while the issue of alter ego of the Pacific Palmdale Development Company being an alter ego of the Bankrupt is offered by the order, that might be eliminated as an issue if counsel so cares, because respondents would stipulate that any money coming to Pacific Palmdale Development Company out of this joint venture agreement with the Reeve Company would be paid to John L. Hudson to exhaust all of the moneys which are in the hands of Lloyd R. Reeve, Inc., a corporation, within the limits set out in the petition. By that last phrase, I mean this: That Lloyd R. Reeve acknowledges that it has on hand about $46,000 or more. The figure $46,000 is used, unless the aggregate payments to be made by Lloyd R. Reeve, Inc. to the Pacific Palmdale Development Company exceeds $50,000, when added to the sum of $20,000 already paid. That money would go to the Bankrupt. While Pacific Palmdale Development Company holds the legal charge against Lloyd R. Reeve, Inc., it has an obligation to Mr. Hudson to pay that amount to him, the first amount.

I simply offer that fact to perhaps satisfy counsel in the alter ego matter. [3]

Mr. Bartley: Your Honor, the Trustee feels that we should get to the bottom of the actual organi-

zation and the actual efficacy of that corporation. The corporation was in existence prior to the filing of bankruptcy. The schedules of the Bankrupt reflect that he has no interest whatever in this corporation. Yet we find that this man, through this corporation, which has as the initial incorporators two relatives of the Bankrupt, and apparently had no initial capital, has been paid $20,000 or $21,000 as a result of transactions which occurred prior to bankruptcy, all of which is not reflected in the schedules of the Bankrupt.

Whether or not the Pacific Palmdale Development Company was indebted to the Bankrupt in the sum of $50,000 or was the alter ego of the Bankrupt, we feel that these funds were part of the assets of the Bankrupt at the time of the filing of his bankruptcy. If there is any net worth of the Pacific Palmdale Development Company, that also is, in the opinion of the Trustee, an asset of this estate and therefore should be determined by this Court whether or not this corporation was, in fact, the alter ego of the Bankrupt.

The Referee: Mr. Granger, is there any question as to the fact that the Pacific Palmdale Development Company was and is the alter ego of the Bankrupt, John Lucas Hudson, Sr.?

Mr. Granger: Very definitely. That is not conceded at all.

The Referee: Very well. Under the circumstances, proceed with your case, Mr. Bartley.

Mr. Bartley: Your Honor, the first thing in the

Trustee's opinion is to dispose of matters in the answer of the respondent.

Paragraph I of the answer raises the issues as to whether or not there is sufficient facts pleaded. It is the contention of the Trustee and if the Court will examine paragraph number two of the petition, it specifically sets forth an oral contract between the Bankrupt and one Lloyd R. Reeve.

Paragraph number three specifically pleads——

The Referee: We don't have to waste any time on that. I think the petition is sufficient for that purpose.

Mr. Bartley: Yes, your Honor.

The Trustee will call Mr. Lloyd R. Reeve.

LLOYD RUSSELL REEVE,

called as a witness on behalf of the Trustee, having been first duly sworn, was examined and testified as follows:

The Referee: Please be seated. Will you state your full name.

The Witness: Lloyd Russell Reeve. [5]

Direct Examination

Q. (By Mr. Bartley): Mr. Reeve, what is your address?

A. Business or residence?

Q. Both.

A. 1150 Wilshire Boulevard is the business. 5026 Laurel Canyon, North Hollywood, is the residence.

Q. What is your business, Mr. Reeve?

A. General contractor.

(Testimony of Lloyd Russell Reeve.)

Q. How long have you been in that business, Mr. Reeve?

A. I have been in my own business about eight years.

Q. Now, Mr. Reeve, do you own any interest in and to the corporation of Lloyd R. Reeve, Inc.?

A. I do.

Q. Is that a corporation?

A. Yes.

Q. Where was the corporation incorporated?

A. In Los Angeles, California.

Q. When was it incorporated?

A. I believe it was incorporated in 1951.

Q. What interest do you own in that corporation, Mr. Reeve?

A. It is my corporation. I own it.

Q. Do you own all of the assets and the stock of that corporation?

A. That is right. [6]

Q. Does anyone own any interest in the corporation?

A. No.

Mr. Bartley: At this point, your Honor, the Trustee will move to amend the petition to correct a typographical error. The correct name of Mr. Reeve is Lloyd R. Reeve which is spelled R-e-e-v-e. I will move to amend all portions of the petition wherein it sets forth R-e-e-v-e-s rather than R-e-e-v-e.

The Referee: In other words, it should not have an *s* at the end of the name?

(Testimony of Lloyd Russell Reeve.)

The Witness: That is right.

Mr. Bartley: That is correct, your Honor, and all references in the petition after the allegations in paragraph number three, wherein the name Lloyd R. Reeves or Reeves is used, should be Lloyd R. Reeve, Inc., a corporation.

The Referee: Is there any objection to the proposed amendment?

Mr. Granger: No objection, your Honor.

The Referee: Very well, then, during the recess or at the conclusion of the case, counsel will make the changes on the original and initial it and it will be approved.

Mr. Bartley: Thank you, your Honor.

The Referee: There are so many places that I cannot do it while I am on the bench, so I am going to ask you gentlemen to do it. [7]

Mr. Bartley: Thank you, your Honor.

Q. (By Mr. Bartley): Now, Mr. Reeve, either as a corporation of Lloyd R. Reeve, Inc., or individually, did you have any business transactions with John Lucas Hudson during the year 1954?

A. Yes, I did.

Q. When did you have your first business transactions in the year 1954 with Mr. Hudson?

A. I believe it was on April 3rd, the 2nd or 3rd of April of 1954.

Q. What was the nature of the transaction which occurred on April 3rd?

A. Well, I was at an attorney's office or—an architect's office on another matter and he asked me

(Testimony of Lloyd Russell Reeve.)

if I would be interested in a grain bin deal or a deal with a friend of theirs, and I said, "Well, I would look it over," so he called Mr. Hudson and I met Mr. Hudson.

Q. Where did you meet Mr. Hudson?

A. In the law office of Liff and Kimm on Sunset Boulevard.

Q. What was the discussion at that meeting between you and the Bankrupt?

A. Well, Mr. Hudson had been in a grain bin deal some two or three years previous——

Mr. Granger: I would like to have this confined now to the conversation. [8]

The Referee: What was said on that date, what was said at that time, Mr. Reeve?

The Witness: Well, how can I say it without——

The Referee: Give the substance of the conversation as near as you can, what you said and what Mr. Hudson said.

The Witness: He said that he had—that they had the bid papers sent out by the—the invitation to bid from the Government and he wanted to find somebody who would go in with him on a grain bin deal, this deal.

Q. (By Mr. Bartley): Now, Mr. Reeve, at any time during this conversation was there any mention made by Mr. Hudson as to contemplated plans of forming a corporation?

A. No, no.

Q. Did you reach any agreement on April 3rd?

(Testimony of Lloyd Russell Reeve.)

A. Not that night, no.

Q. Did you have any further negotiations with Mr. Hudson?

A. Yes. We left it that night that he would see someone else and contact me the next day.

Q. Did he contact you the next day?

A. He did.

Q. Where did you meet?

A. In my office.

Q. What was the conversation which occurred between the two of you at that meeting of April 4th? [9]

A. That he wanted me to go ahead with him and finance the grain bin deal or this deal.

Q. Now, in return for your services of financing, did Mr. Hudson agree to perform any services himself?

A. Yes.

Q. And what did he say regarding that?

A. Well, he had all the experience and he was going to put the experience into the deal, if I would finance it.

Q. Precisely, what was Mr. Hudson to do for you in return for your financing it?

A. Well, he was to put his knowledge of having been in two deals. He was to put that knowledge into the grain bin deal and actually do the leg work.

Q. By the grain bin work and the leg work, do you mean the procurement of contracts?

(Testimony of Lloyd Russell Reeve.)

A. And the manufacturing and erection of the bins: He was to assist me in all that work, yes.

Q. Did you reach any firm understanding on that day?

Mr. Granger: I think that is kind of a conclusion on the part of the witness. It is calling for a conclusion of the witness.

Mr. Bartley: I will strike the question and reask the question, your Honor.

The Referee: Very well.

Q. (By Mr. Bartley): Was there any further conversation [10] on that date?

The Referee: Was anything further said or done on that day? That is counsel's question.

Mr. Bartley: Yes, your Honor, that is my question.

The Witness: Oh, yes. We spent—I believe John came into the office and if I remember rightly, it was in the afternoon, and we spent the day going over his records. We spent all the day and I think into the evening going over his records of his previous deal.

Q. (By Mr. Bartley): Did you state that you would pay him any given amount in return for his services?

A. Yes, he and I were to—after the expenses of the deal were all consummated, he was to take half and I was to take half.

Q. At this time, was there any mention of a prospective corporation?

A. I wouldn't want to say yes or no at that

(Testimony of Lloyd Russell Reeve.)

particular time. That day, I don't know that day whether he said anything about it or not. I don't know.

Q. Did you deal at this time with Mr. Hudson as an individual or as a corporation?

Mr. Granger: That is objected to as calling for a conclusion of the witness.

The Referee: Sustained.

Q. (By Mr. Bartley): Was there any discussion as to whether or not any agreement between the parties [11] would be between you as an individual as distinguished from between you as a corporation of Reeve, Inc.?

Mr. Granger: That is objected to as having been, in effect, asked and answered, because the witness testified that no reference was made of the corporation that day.

The Referee: Objection is sustained.

Q. (By Mr. Bartley): Did you have any further discussion with Mr. Hudson subsequent to April 4th?

A. Yes. He was in the office on the 5th, which was a Saturday, I believe. Yes. Yes.

Q. And what was said between the two of you? What was said and done to the best of your recollection?

A. Well, we were working on the deal and getting ready to go to Washington.

Q. Well, what conversation did you have regarding this deal?

A. Well, ——

(Testimony of Lloyd Russell Reeve.)

The Referee: What was further said and done on that day in connection with the deal that had been previously discussed? That is what counsel wishes to know.

The Witness: Well, we went over the general proposition of a construction contract. We talked about what he had done on the previous—on his previous contracts and what we would do on this contract and what we would do when we went to Washington to obtain the bid [12] or the contract, submit the bid.

It was all connected with the conversations about the deal. Specifically what was said, I don't remember. It was just all conversation pertaining to this grain bin contract we were proposing to bid on.

Q. Was anything said about a written contract being drawn up between the two of you parties?

A. Yes. Yes.

Q. What was the discussion relating to that subject? What was said and done relating to the drawing up of a contract between the two of you?

A. That was the time, I believe, that he mentioned that our attorneys would get together and draw up a contract.

Q. Did you discuss who the parties on the contract would be?

A. No. It was about that time that the Pacific Palmdale Development Corporation got into the picture, and I asked who they were.

The Referee: Who mentioned the Pacific Palmdale Development Company?

(Testimony of Lloyd Russell Reeve.)

The Witness: Mr. Hudson.

The Referee: What did he say in that connection?

The Witness: Well, he said something about the Pacific Palmdale Development Company. I said who is the Pacific Palmdale Development Company? [13]

Q. (By Mr. Bartley): What was his answer?

A. To my best recollection, he said that he was the Pacific Palmdale Company, a corporation; that he had a Mr. Phil Bloom and a Mr. Merrill Granger who was an attorney.

Q. What did he say about Mr. Granger and Mr. Bloom?

A. Well, I wouldn't be truthful in saying that this was said at that particular time, because it came out some time that Mr. Bloom was in another contract to build some houses in Palmdale, and he had to take him into the corporation for that reason.

Mr. Granger was the attorney and he was paying him 12½ percent of every cent he made in that capacity.

Q. Now, Mr. Reeve, subsequent to April 5, 1954, did you have any other meetings with Mr. Hudson? Did you meet on the 6th of April?

A. Yes, I believe we did.

Q. Where did you meet on the 6th?

A. In my office here.

Q. Do you recall what was discussed and what was said?

(Testimony of Lloyd Russell Reeve.)

A. No. It was just general things pertaining to the contract.

Q. Now, at any time between this period of April 3rd to April 6, 1954, was there any discussion as to whether or not an attorney should be employed to draw this written contract you have mentioned? [14]

A. Well, the only thing that I know of is he had his attorney and I hired Mr. Minton as my attorney, and they got together on the Monday. I believe that would be the 6th.

Q. Were you present at this meeting of April 6th you have mentioned between the attorneys?

A. No, I was not.

Now, I might be hazy on those dates, but they were in sequence because I know——

Q. Now, Mr. Hudson, did you ever sign any written agreement relating to what was discussed between you and Mr. Hudson?

A. You mean Reeve, don't you?

Q. Yes, I mean Reeve. Excuse me.

A. Did I sign any written agreement?

Q. Yes.

A. I signed a contract with Mr. Hudson, yes.

Q. When and where did you sign that contract?

A. At the Statler Hotel in Washington, D. C. I believe it was on the 7th of April.

Mr. Bartley: May I have one moment, your Honor?

The Referee: Very well.

Mr. Bartley: I am getting a document.

(Testimony of Lloyd Russell Reeve.)

Q. Mr. Reeve, I place before you——

The Referee: Have you seen the document, counsel?

Mr. Granger: I haven't yet, your Honor. [15]

Mr. Bartley: I will exhibit it to you before I show it to the witness.

(Whereupon the document was exhibited to counsel.)

Q. (By Mr. Bartley): Mr. Reeve, I exhibit to you a document of some five pages, which is——

Mr. Granger: Just a moment, counsel. To save time as to the identification of that document, it will be stipulated that the document held by the witness is a copy of the agreement as to which the witness testified which was signed by him and the respondent, Mr. Hudson, in the Statler Hotel in Washington, D. C., early in April of 1954.

Mr. Bartley: Your Honor, for the purposes of the record, I might note for the Court that the bottom of the pages on this document——

The Referee: Are you offering it in evidence now?

Mr. Bartley: Yes.

The Referee: Is there any objection?

Mr. Granger: No, your Honor, no objection.

Mr. Bartley: I might state for the purposes of——

The Referee: Just a moment. The agreement is received in evidence as Trustee's Exhibit No. 1.

Now, you can call my attention to anything you wish.

(Testimony of Lloyd Russell Reeve.)

Mr. Bartley: Yes, your Honor. At the bottom of each of the pages of that document is a notation, Exhibit A, [16] and so forth. That has no part of the agreement and the reason for those notations is the fact that this was introduced as an exhibit in another case——

Mr. Granger: So stipulated.

Mr. Bartley: (Continuing) ——as a part of a pleading, your Honor.

The Referee: Very well.

Q. (By Mr. Bartley): Mr. Reeve, I notice from the document which we have just introduced as the Trustee's Exhibit 1, that this document was apparently executed by the Pacific Palmdale Development Company, Inc., and by Lloyd R. Reeve, Inc. Did you have any discussion with Mr. Hudson prior to the execution of this document regarding the Pacific Palmdale Development Company, Inc.?

A. At the time it was signed?

Q. Yes. A. No.

Q. Did you have any discussion with Mr. Hudson prior to that time about this corporation?

A. Only as stated, that it had been mentioned in our conversations that there was a Phil Bloom and a Merrill Granger connected with it.

Q. Did Mr. Hudson state that he owned the company?

Mr. Granger: That is objected to as having been asked and answered.

The Referee: The objection is overruled. You may [17] answer.

(Testimony of Lloyd Russell Reeve.)

The Witness: I have been, never been under any other impression than that John L. Hudson was the Pacific Palmdale Development Company.

Mr. Granger: I move to strike that answer as a conclusion of the witness.

The Referee: The answer is stricken.

Mr. Reeve, counsel is asking you what was said by Mr. Hudson with reference to the Palmdale Development Company when it was first mentioned. That is the line of questioning that the attorney for the Trustee has been propounding to you.

The Witness: You asked the question again and I didn't get it that way.

Mr. Bartley: I will strike the prior question and re-ask the question.

The Referee: If counsel for the Trustee, Mr. Bartley, would restate his question, perhaps we can clear it up.

Mr. Bartley: Yes, your Honor.

Q. (By Mr. Bartley): Mr. Reeve, did at any time prior to the execution of this agreement, Mr. Hudson make any representations as to the ownership of the Pacific Palmdale Development Company, as to who owned the company?

A. Yes, he said he owned it.

Q. Now, approximately when did he tell you that, on approximately what date? [18]

A. Some time in the interim of our conversations.

The Referee: What did he exactly say in connection with your answer that he said that he

(Testimony of Lloyd Russell Reeve.)

owned it? Give it as near as you can. Give us as near as you can the language that he used at that time.

The Witness: Well, the conversations regarding — concerning Mr. Hudson's ownership of the Pacific Palmdale was the fact—if I have to say it, I will say it. It was that this Pacific Palmdale Development Company was a corporation that he had organized to benefit himself.

The Referee: Mr. Reeve, did he so state to you? Did Mr. Hudson so state to you?

The Witness: Yes.

Q. (By Mr. Bartley): When, approximately what date?

A. Well, I can't give you the date on that at all.

Q. Was it some time in the early part of April, 1954?

A. Yes, sir, within that time.

Q. Where was that conversation?

A. It could have been in my office or it could have been in the hotel.

Q. Was anyone else present? Was anyone else present besides the two of you?

A. Well, that I wouldn't know. That I wouldn't know.

The Referee: What did he state in reference to this corporation? You stated he said, in fact, that it was a corporation. Give us his language as near as you can [19] recall it. That is what counsel wishes.

The Witness: That is what I am trying to do.

(Testimony of Lloyd Russell Reeve.)

I don't remember. I had no other conclusion that I was dealing directly and dealing with John Hudson.

Mr. Granger: I move to strike that answer.

The Referee: The answer is stricken.

Mr. Reeve, the Court wishes to know as nearly as possible the language that was used by Mr. Hudson from which you concluded he was a sole owner of this corporation. He must have said something to you and that is what counsel is asking you.

The Witness: Well, as to the exact words, I would——

The Referee: As near as you can remember.

The Witness: Because I can't give you the exact words at all, I am telling you what the gist of the conversation was. That goes over a year or a year and a half ago and for the direct, absolute words, I wouldn't say. No, I wouldn't say that at all.

Mr. Bartley: Your Honor, may I have the Trustee's exhibit?

The Referee: Yes.

Q. (By Mr. Bartley): Mr. Reeve, I place before you this document and I wish you will follow me as I ask these questions.

On page two of the exhibit you have before you, starting at line one, is a paragraph numbered two and at [20] line four, the following language appears: "That the availability of the said John L. Hudson by the party of the second part is one of the inducing considerations for the party of the first part entering into this joint venture."

(Testimony of Lloyd Russell Reeve.)

A. Yes.

Q. Once again, on the same page on line 25, starting at the word "and" appears the following language: "and the party of the second part shall make available to the party of the first part the services of the said John L. Hudson for such time as may be reasonable and necessary to procure and perform any such contracts from the Commodity Credit Corporation."

Now, Mr. Reeve, in examining the rest of this document, I note that the document is silent as to what percentage of the services of Mr. Hudson would relate to the words found on line 27, "procure and perform any such contracts", which percentage would relate to the procurement of the contracts and which percentage would relate to the performance of this contract.

As the inducement for your entering into this contract, Mr. Reeve, what percentage of the work of Mr. Hudson was to have been done in the procurement of these contracts and what percentage was to have been done in the performance of this contract?

Mr. Granger: That is objected to as incompetent, [21] irrelevant and immaterial. The contract expresses what the agreement was between the parties. I don't think it is subject to interpretation other than just to refer to the circumstances and conditions under which it was executed or however the parties may have treated it afterwards.

Mr. Bartley: I can reword the question, but the

(Testimony of Lloyd Russell Reeve.)

contract is silent as to this particular point as to what percentage was procurement and what percentage was performance and it is highly relevant to the determination by this Court as to what percentage was procurement.

It is the contention of the Trustee that the contract was procured entirely before the filing of the petition. At least, that portion of the contracts that was fully performed and the amount due for the procurement of the contracts was an asset of this estate. As to performance after this contract, this estate has no interest.

Mr. Granger: In opposition to that, the Bankrupt and the respondent urge that it would be indeed material to the question of whether any of this compensation is available to the bankruptcy estate, that there is a division or some method of dividing the consideration to be given from the Pacific Palmdale Development Company or through John L. Hudson to Mr. Reeve, but the contract, your Honor, you will observe, does not give that right to John L. Hudson. The obligation of Pacific Palmdale Development Company is to make available to Lloyd R. Reeve the services of John L. Hudson with no division as to procurement or performance.

It is up to Mr. Reeve to determine to what extent, if at all, he will avail himself of the services of John L. Hudson in performing either, and the contract is not divided. The parties do not divide it, and it is the claim of these respondents that the Trustee cannot divide it.

(Testimony of Lloyd Russell Reeve.)

The Referee: Gentlemen, you are referring to paragraph two of the contract now, are you not?

Mr. Bartley: Paragraph five specifically, your Honor. Paragraph two relates to the availability of Mr. Hudson.

The Referee: Yes.

Mr. Bartley: And paragraph five starting at line 27.

The Referee: Let us read the paragraph first.

Mr. Bartley: Starting at line 25 in paragraph four.

The Referee: Paragraph two provides: "That the party of the second part has in its association and/or employ one John L. Hudson whom it will make available to the parties hereto in the performance and execution of any contracts entered into by the parties hereto and in the furtherance of the aims of this agreement; that the availability of the said John L. Hudson by the party of the second part is one of the inducing considerations for the party of the first part entering into this joint venture." [23]

Paragraph five provides: "That the party of the first part shall forthwith supply the management and all the labor and material to supply any contracts received after bidding on the same, with the end in view of fulfilling all required work within the time specified and the party of the second part shall make available to the party of the first part the services of the said John L. Hudson for such time as may be reasonable and necessary to procure

(Testimony of Lloyd Russell Reeve.)

and perform any such contracts from the Commodity Credit Corporation for the construction of grain storage bins or other accommodations at the expense of the party of the second part, and that the party of the second part will hold the party of the first part harmless on account of any demand of said John L. Hudson for compensation for any such services performed by him."

Mr. Bartley: I will strike my prior question, your Honor, and attempt once again to clear it up.

The Referee: Is it your contention, Mr. Bartley, that Mr. John L. Hudson, acting for and on behalf of Pacific Palmdale Development Company, procured these contracts prior to the inception of bankruptcy?

Mr. Bartley: Yes, your Honor, we intend to show that.

The Referee: Very well.

The objection to the question is overruled, but it is so far back that we will save time if you will re-frame your question and ask it again. [24]

Mr. Bartley: Yes.

Q. (By Mr. Bartley): Mr. Reeve, you have just heard the Court read that portion of this contract which is Trustee's Exhibit No. 1, which relates to the services of John L. Hudson in procuring and performing contracts from the Commodity Credit Corporation.

Now, to the best of your knowledge and as best as you can draw any cleavage and distinction between procurement of the contract and perform-

(Testimony of Lloyd Russell Reeve.)

ance of the contract, what percentage of the services of Mr. Hudson was to be for the procurement of contracts and what percentage was to be rendered to your corporation in the performance of the contract.

Mr. Granger: That is objected to as incompetent, irrelevant and immaterial. It further calls for an opinion and conclusion of the witness. It is interpretive of the contract and seeks to add to the contract a provision which it does not have and a control of the division of these funds which is contrary to the express provisions of the contract.

There is no intimation in the contract that any consideration is to be paid for the services that John L. Hudson may have expended in procuring this contract. In fact, under the terms of this contract, an entirely possible development was that Mr. Hudson's services would never be used, because they were to be made available to Lloyd R. [25] Reeve, Inc., to the extent that he would use them. Sometimes he used them, and sometimes he did not use them, but it does not seem to me that the witness is competent to state what portion of the time and the effort and the labors that Mr. Hudson put in under this agreement can be determined by this witness, and what is apportionable to the procurement services.

Mr. Bartley: Your Honor, the witness can certainly testify as to paragraph number two, which specifically states that one of the inducing considerations was the availability of Mr. Hudson, and as

(Testimony of Lloyd Russell Reeve.)

to paragraph five, which states that he was to perform two services: to procure and perform contracts. As to the inducement of entering into this contract, this witness is, by all means, the only person competent to state the reason of the inducement and the services which were desired.

This contract is silent as to the major inducement. It merely states that the services of Mr. Hudson is one of the inducing considerations for his entering into the contract. It is silent whether the major inducement is procurement or whether it is performance of the contract, whether it is technical skill in the erection of the grain bins involved or whether it is the knowledge and the know-how of procuring contracts from the governmental agency. It is that point that the Trustee is trying to get at at this time. The only way we see that we can get at it is [26] by having the witness, to the best of his ability, give that information to the Court.

Mr. Granger: I would forego my objection to the competency of the witness if the effort were made to establish these points: What did Mr. Hudson do? What time did he put in? What trips did he make? What was his effort? What hours did he put in towards the procurement of that contract?

I think perhaps Mr. Reeve could competently testify to that within the limits of his own knowledge. Of course, beyond that, I would still object.

Mr. Bartley: I will reserve the question and do as Mr. Granger suggests and go into other matters, which I have intended to develop at any rate.

(Testimony of Lloyd Russell Reeve.)

Mr. Granger: Beyond that, we are faced with the bald question of law of whether or not under a contract like this, procurement and performance are at all divisible.

The Referee: The objection is sustained without prejudice to counsel going into that line of questioning and laying a date.

It seems to me, gentlemen, that the paramount issue here is whether or not, in fact, this corporation, Palmdale Pacific Development Corporation, was not in fact the alter ego of the Bankrupt. In other words, if the corporation was his alter ego and it is one and indivisible, it does not make any difference whether he did or did not [27] perform or devote himself to the joint enterprise.

Mr. Bartley: Yes, your Honor.

The Referee: And I am wondering if we wouldn't make more progress and save time by settling this question. I don't want to interrupt your procedure.

Mr. Granger: But in view of the proposed questioning, I think I would like to state to the Court what our position is.

The Referee: The objection has been sustained, but you may state your position.

Mr. Granger: Thank you, your Honor.

It would be the contention of each respondent that even though—if the contract is not divisible either as to performance or as to compensation, that if the large part of his work was performed by the Bankrupt—now, I am going to assume that even though this corporation was an alter ego, that

(Testimony of Lloyd Russell Reeve.)

if the large part of this work was performed by the Bankrupt after his adjudication, there is no compensation that belongs to his estate, even though the corporation should prove to be his alter ego.

Still, if the substantial portion of his work was performed after his adjudication on April 19th, his bankruptcy estate is entitled to no portion of that consideration.

Mr. Bartley: I won't bother answering that statement at this time. [28]

The Referee: Counsel has just stated his position. It is not necessary to answer it.

Q. (By Mr. Bartley): Mr. Reeve, did Mr. Hudson perform any services under this contract?

A. Yes.

Q. And when did he first perform services under this contract? A. To me?

Q. Well, when did you sign the contract?

A. We signed the contract about two o'clock in the afternoon—wait a minute, about five o'clock. I think it was on the afternoon of the 7th of April.

Q. You have heretofore stated that that was in Washington, D. C.? A. Yes.

Q. Did Mr. Hudson perform any services in Washington, D. C. at that time or on or about that time in connection with this contract?

A. Well, can I state it in my own way without offending anyone?

Q. Will you state what he did.

A. Well, we were all back there for the purpose of submitting a bid to the Government for

(Testimony of Lloyd Russell Reeve.)

grain bins, the three of ~~us~~, John L. Hudson, myself ~~and a man~~ by the name of Gene Wilbur. We all had our hands in it. We had all had this conversation and the like. [29]

Q. How long were you in Washington working on this bid that you have spoken of?

A. We submitted the bid, I believe, it was at five o'clock on the 9th of April.

Q. When did you leave Washington, D. C.?

A. I think I left there the next day.

Q. Do you know when Mr. Hudson left Washington, D. C.?

A. Well, we all checked out of the hotel the same day. I don't know when he left.

Q. Did you receive any information from the Commodity Credit Corporation as to any action taken on your bid?

A. Yes, we received a wire. We had been awarded the contract.

Q. When did you receive this wire?

A. I haven't the date. I don't remember what the date was.

Q. Do you have the wire?

A. We have the wire in our files, yes.

Q. Could you produce that wire?

A. I could, but not now.

Q. Could you at a later date produce that wire?

A. Yes.

The Referee: Approximately how long was it after that?

(Testimony of Lloyd Russell Reeve.)

Mr. Granger: We have a copy of the wire that can be used.

The Referee: All right. [30]

Mr. Granger: As far as that goes, we will stipulate that the conditional acceptance was forwarded to the Lloyd R. Reeve, Inc., by the Commodity Credit Corporation on April 17th, 1954.

Mr. Bartley: Your Honor, it will not be necessary to introduce the wire if the stipulation is made of the conditional acceptance; that the conditional acceptance was made on April 17, 1954.

Q. (By Mr. Bartley): Mr. Reeve, did you reply to this wire you received from the Commodity Credit Corporation? A. Yes.

Q. When did you reply to this wire?

A. I haven't that date with me.

Q. Approximately how long after the receipt of the wire did you reply?

A. Oh, I think we talked it over thoroughly and it was a day or two, I believe, that we accepted it.

Q. Was it within two days of the time that you received the wire——

A. That I won't say.

Q. (Continuing) ——that you accepted it?

A. That I won't say. I don't remember what the dates were.

Q. Do you have books and records which will reflect that date?

A. That is right. That is right. [31]

Q. Was it in excess of four days after the receipt of it?

(Testimony of Lloyd Russell Reeve.)

A. I won't state. I don't recall.

Q. Mr. Reeve, as the result of the acceptance of this bid, did you perform services for the Commodity Credit Corporation. A. We did.

Q. Did Mr. Hudson assist you in the performance of these services? A. He did.

Q. To the best of your recollection, approximately how many hours did Mr. Hudson——

A. I wouldn't offer any testimony at all on that.

Q. (Continuing) ——assist you? Was it frequently or infrequently?

A. Well, to start with it was quite frequently, yes.

Q. How long were you in the performance of these bids?

A. We were about—well, the consultations and all have been going on over a period of a year.

Q. How did Mr. Hudson assist you?

A. How?

Q. In the performance, yes.

A. Well, he lent some advice and was consulted on what was taking place, what was being done. He went to Sacramento and was up there at the plant for some days.

Q. Approximately for how long? [32]

A. I wouldn't make any statement on that. It was for some time.

Q. Now, Mr. Reeve, to the best of your recollection, what were the net profits resulting as a result of the performance of this contract with Commodity Credit Corporation?

(Testimony of Lloyd Russell Reeve.)

A. Well, I would say right now that it will be somewhere in the neighborhood of—we got a question there now as to what we determine as net profits.

Q. After the payment of your expenses, what was the profit to you, your net profit?

A. Well, we are still paying expenses.

Q. I see.

A. I would say that what we call—what we call net profit would run maybe $100,000. Now, out of that $100,000 is going to be a commission of ten percent to one man, five percent to another, and five percent to another. It will have to be deducted from that.

Q. Now, has the Lloyd R. Reeve Corporation made any payments under this contract of April 7, 1954, to either the Pacific Palmdale Development Company, Inc., or to Mr. John Lucas Hudson?

A. Yes, we have.

Q. To whom have payments been made?

A. Well, let me see. I think there was one check for $1,000 made payable to John Hudson. There is another [33] check for $15,000 that was made payable to John Hudson.

I don't know what you would call it, but it was an order from the Pacific Palmdale Corporation to pay that money.

There was another check for $5,000 with a like instrument.

Q. Do you recall the approximate dates of those payments?

(Testimony of Lloyd Russell Reeve.)

The Referee: Is there any question of the date set forth in paragraph nine of the petition as being correct?

Mr. Granger: I think our answer admitted it.

Mr. Bartley: That is right. There is no point in going into it then.

The Referee: Unless there is something the Court cannot see.

Mr. Bartley: No, your Honor.

Q. (By Mr. Bartley): Are there any further services to be performed under that contract or those contracts? A. I wish there were.

The Referee: Have the contracts been completed?

The Witness: No, they have not been completed.

The Referee: What remains to be done?

The Witness: Well, we have a complaint that there is some repair work to be done on some bins in one of the states.

Mr. Bartley: Approximately how much will that work [34] entail, approximately how much expense?

The Referee: Is that a minor repair or has the contract as a whole been completed?

The Witness: The contract as a whole has been completed.

The Referee: There are some complaints requiring some repair work?

The Witness: That is right. That is right.

The Referee: You may proceed, counsel.

(Testimony of Lloyd Russell Reeve.)

Q. (By Mr. Bartley): Now, Mr. Reeve, I will once again get back to the question of the representations of Mr. Hudson regarding ownership of Pacific Palmdale Development Company.

At any time subsequent to the execution of this agreement of April 7, 1954, did you have any discussions with Mr. Hudson regarding the Pacific Palmdale Development Company or in which the Pacific Palmdale Development Company was mentioned? A. Well, ——

The Referee: That requires simply a yes or no answer, Mr. Reeve, and then you can explain it further after your answer is given.

The Witness: Well, I would say yes. There must have been.

Q. (By Mr. Bartley): Do you recall approximately when this discussion took place? [35]

A. No I can't.

Q. And where?

A. I can't pinpoint it at all. No, I can't.

Q. What was the substance of your discussion and who was present?

A. Well, the substance of the discussion was that I wanted to know who I was dealing with; that was the substance of the discussion.

Mr. Granger: Could I go back? I missed a question and answer.

(Whereupon the requested question and answer were read by the reporter.)

Q. (By Mr. Bartley): When was this conversation, Mr. Reeve?

(Testimony of Lloyd Russell Reeve.)

A. Prior to signing this contract. Prior to the signing of this contract, wasn't it?

Q. My question is subsequent. You already testified to the prior. I am talking about after the contract was executed.

A. Oh, after. Oh, yes. Many times. The Palmdale has been discussed many times.

Q. Approximately when were these discussions?

A. Oh, the period of our association.

Q. What was the content of these discussions? What was said and done?

A. Well, Mr. Hudson would tell me about the Pacific [36] Palmdale Development Company and what they were doing and what he was trying to do.

Q. Was there any mention as to who owned the Pacific Palmdale Development Company?

A. Yes.

Q. What was the nature of that discussion?

A. That John L. Hudson owned the Pacific Palmdale Development Company.

Q. Approximately how many times was that represented to you? A. A number of times.

Q. What do you mean by a number of times? Try, to the best of your ability, to recollect how many times.

A. I couldn't, because I have been talking to the man for a year.

Q. Was it on numerous occasions?

A. Yes, it was.

Q. Now, Mr. Reeve, at any time in the perform-

(Testimony of Lloyd Russell Reeve.)

ance of the contract of April 7, 1954, or the contract with the Commodity Credit Corporation, did you have any dealings with anyone in connection with Pacific Palmdale Development Company other than with Mr. Hudson?

A. No, not directly, no.

Mr. Bartley: I have no further questions, your Honor. [37]

Cross Examination

Q. (By Mr. Granger): Mr. Reeve, your recollection was that you had had your first conversation with Mr. Hudson about April 2nd or 3rd, is that correct? A. Along there, yes.

Q. And that followed as a result of an inquiry to you from the firm of Liff and Kimm, architects?

A. Yes.

Q. You first met Mr. Hudson in the office of Liff and Kimm? A. That is right.

Q. Which one of the partners of Liff and Kimm was it that introduced you to the transaction?

A. Oscar Liff.

Q. And how long did you have a first meeting with Mr. Hudson in their office?

A. Oh, I would say, I would say I waited maybe an hour, an hour and a half for Mr. Hudson to get there, maybe two hours, maybe an hour and a half, two hours.

Q. How long did you have a conversation with Mr. Hudson there?

A. Well, he was in the conversation there with

(Testimony of Lloyd Russell Reeve.)

four of us there. Particularly for him, I don't know how long.

Q. How long was it after he got there, Mr. Reeve?

A. About an hour, an hour and a half, I would say. [38]

Q. As I recall, then you made an appointment to see him the next day?

A. He made an appointment with me the next day.

Q. You didn't share in that?

A. I beg your pardon?

Q. You shared in making an appointment for the next day, did you not?

A. That is right. That is right.

Q. At your office? A. That is right.

Q. What time of day did he come down at that time?

A. I believe it was after noon, if I remember right.

Q. Did he show up at all that day?

A. I believe he did. I believe it was the next after—that afternoon.

Q. Do you remember that he called at the office at five o'clock and found it locked and had to telephone you? Do you remember that?

A. No, I don't remember that. No.

Q. You didn't phone him? You didn't phone him after missing each other at the office on that day? A. No, I don't think so.

Q. Did Mr. Hudson have with him the invita-

(Testimony of Lloyd Russell Reeve.)

tion to bid received from the Commodity Credit Corporation? A. That is right.

Q. It was quite a sheaf of documents, was it?

A. Well, I would say yes. It was the customary invitation to bid.

Q. Can you correlate a date of the month with the date of the week at about April 5th, Mr. Reeve?

A. I would say that that was Saturday. Maybe I am wrong.

Q. You believe April 5th would be on Saturday?

A. That is my recollection of it now.

Q. Do you remember the date that you went to Washington? A. Yes.

Q. What date was that?

A. I left the night of the 6th.

Q. And you found Mr. Hudson already in Washington? A. That is right.

Q. How long was that after the meeting in your office, your first meeting in your office with Mr. Hudson?

A. I believe the first meeting in my office was on Friday.

Q. It was the preceding Friday?

A. Yes, the preceding Friday.

Q. I see.

A. Either Thursday or Friday. Now, I am not just checking the dates, but it is along in there.

Q. Then, over the balance of Friday, perhaps Saturday and Sunday, Monday, until you left for Washington on the [40] night of the 6th——

A. Yes.

(Testimony of Lloyd Russell Reeve.)

Q. (Continuing) ——you and Mr. Hudson worked together to fill out these bid forms?

A. I don't think we did anything about the bid forms here. I think we did all of that in Washington.

Q. I see. But you assembled some data here and considered what your bid might be?

A. That is right. That is right.

Q. Do you know when Mr. Hudson went to Washington on the occasion of your trip to Washington?

A. I believe they left some time Sunday afternoon. I am not sure.

Q. That would be the night of the 4th?

A. No, I think that would be the 5th, wouldn't it? The 5th of April, I believe.

Q. Do you remember that?

A. It was on a Sunday afternoon when he went.

Q. It was on a Sunday afternoon?

A. I believe it was.

Q. Their plan was to fly to Washington arriving there some time—— A. That is right.

Q. (Continuing) ——through the night?

A. I don't know when they arrived.

Q. Did you go straight to Washington from here? [41] A. Yes.

Q. On the occasion of Mr. Hudson's departure for Washington, you had an arrangement with him, did you not, by which the agreement covering this grain bin deal with your joint venture was to be drawn up in Mr. Minton's office?

(Testimony of Lloyd Russell Reeve.)

A. And I was to wait for it, yes.

Q. You were to wait for it? A. Yes.

Q. You understood that I was to go to Mr. Minton's office and help him prepare that contract? A. That is right. That is right.

Q. As a matter of fact, you know that I was there all the day of the 6th, do you not, most of the day on the 6th?

A. I wouldn't say all day. I wouldn't say that.

Q. Well, for the substantial portion of that day, I was there, was I not? A. I don't know.

Q. While I purported to be there, did not Mr. Minton telephone you and make reference to proposed provisions to be put into that contract, to get your consent or disapproval?

A. Yes, I think he did.

Q. And he did that several times?

A. Yes, I think he did.

Q. And the contract was several pages in length?

A. Yes.

Q. That was written up in Mr. Minton's office that day, was it not? A. That is right.

Q. And Mr. Minton took it to you at the airplane on which you left for Washington that night, did he not?

A. I don't think so. I don't think so.

Q. Where were you when you received the copies of the contract which was signed in Washington?

A. I think they were — I think my secretary went down and got them.

(Testimony of Lloyd Russell Reeve.)

Q. In the daytime?

A. No, at night, late at night.

Q. Where did she go, to Mr. Minton's office?

A. Yes.

Q. Or to his home?

A. To the office, I believe. I don't know. I wouldn't say to that.

Q. At any rate, as far as you know, they were picked up late at night? A. After six o'clock.

Q. Was it your secretary or Mr. Minton that delivered them to you that night?

Mr. Bartley: I am going to object to this line of questioning. This is entirely irrelevant, the time of the delivery of a contract, and so forth. I fail to see how it [43] has any bearing on the issues of this case.

The Referee: Unless there is something important which has been overlooked, it seems to be irrelevant.

Mr. Granger: I want to test the witness's recollection of this and the petition alleges that on the 6th an agreement was made, and as of the 6th certain rights attached. As a matter of fact, we think there are a few days' difference for what effect it may have in the suit. I would like to test the witness's memory in those matters.

The Referee: I think you have proceeded on that theory far enough and an objection would be sustained.

Q. (By Mr. Granger): Now, you met Mr. Hudson at the Statler Hotel in Washington?

(Testimony of Lloyd Russell Reeve.)

A. Yes.

Q. Your memory would be that you met him on the morning of the 7th?

A. No. It was after lunch. Now, as I say, I am just—it could be one day one way or the other. If the days do not jibe with the dates, they can be set by the terms of the contract and our arrival in Washington.

Q. When you and Mr. Hudson signed that contract, the joint venture contract, no date was put on it, was there? A. No, there wasn't, no.

Q. There hasn't been since, has there?

A. No, I don't think so.

Q. You placed a bid with the Government on the 9th? [44] A. I believe that is the date.

Q. I understand that that is the date.

A. I believe that is the date.

Q. What time of the day on the 9th was it?

A. It was late in the afternoon, I believe. We got there about 4:30 in the afternoon.

Q. So, within your own observation, Mr. Hudson performed work in the procurement of this contract at Washington from some time in the early afternoon on the 7th to the late afternoon on the 9th of April, 1954? A. Yes.

Q. And shortly after that, you all checked out?

A. The next morning.

Q. Is that true? A. Yes.

Q. Nothing more was necessary to be done, was there, Mr. Reeve? Or you didn't do anything more after that to obtain the contract from the Government except to—— A. No.

(Testimony of Lloyd Russell Reeve.)

Q. (Continuing) ——to respond to their communications to you? A. No, that is right.

The Referee: I think this is a good time to take a five minute recess so that the reporter may have a rest.

(Recess.)

The Referee: Let us resume the John Lucas Hudson [45] matter. Mr. Reeve, will you please resume the stand.

Cross Examination (Continued)

Q. (By Mr. Granger): Mr. Reeve, at Washington, D. C., at the time of the signature, at the time of affixing of the signatures to the contract, Exhibit 1, did you make any inquiry as to who the interested parties were in Pacific Palmdale Development Company?

A. No, I thought I understood before.

Q. I asked you: Did you make any inquiry at that time? A. No. No.

Q. Have you made inquiry since that time? Have you made inquiry from Mr. Hudson?

A. No. No, I don't think so; not directly.

Q. You stated——

A. Or do you mean since the contract? Oh, yes.

Q. At any time.

A. Yes, since the contract, yes.

Q. What did he say?

A. Well, he told me that Phil Bloom and Merrill Granger were in it.

Q. Did he say anything about Mrs. Hudson, Mrs.

(Testimony of Lloyd Russell Reeve.)

Blanche Hudson? A. No.

Q. Did he explain the interest of Phil Bloom in the [46] matter?

A. No, any more than he was one of the corporation.

Q. Now, Mr. Reeve, you stated that the only person you had negotiations with, with reference to this contract, Exhibit 1, was with Mr. Hudson.

A. That is right.

Q. With reference to that subject matter, you had some trouble providing the bond that the Government required, did you not? A. Yes.

Q. And as I recall, you had a bonding company with whom you had done business or with whom you were familiar that had prepared the bond and they declined to sign it for you, is that true?

A. That is right.

Q. And you gave that word to Mr. Hudson, did you not? You reported that to Mr. Hudson?

A. Yes.

Q. And your first meeting with me was in your office on the occasion when Mr. Hudson, you and I and others were seeking to find a bonding company who could write the bond for you, is that true? A. That is right.

Q. And I was on that occasion making that effort? A. That is right.

Q. That was on a Saturday, was it not? [47]

A. I believe it was on a Sunday, was it not?

Q. Do you remember that Mr. Hayes flew down from Portland? A. That is right.

(Testimony of Lloyd Russell Reeve.)

Q. Do you remember that he arrived on Sunday? A. Sunday afternoon, yes.

Q. Do you remember that I was in the office along with the others attempting to get this bond Saturday when Mr. Hudson phoned Mr. Hayes at Portland and asked him to come down that night and meet with us at your office Sunday morning?

A. I wouldn't recall the days. I don't recall. I don't remember you being in it on Saturday.

Mr. Bartley: I will object to this line of questioning. I think it is irrelevant until some offer of proof is made. I fail to see the relevancy of the meeting of the bond. I do not think it affects the basic issues of the case.

Mr. Granger: I am just describing the events which led up to my own negotiations with Mr. Reeve. He said he had none except with Mr. Hudson.

The Referee: I think the question has been answered, has it not?

Mr. Bartley: Yes, your Honor. I am objecting to the whole line of questioning relating to the bond.

The Referee: I don't see the materiality of it at [48] this point. However, if it is preliminary to something that you can point out, which is important, why, the Court will allow it.

Mr. Granger: I was right at that point.

Q. (By Mr. Granger): On Sunday Mr. Hayes had come down from Oregon, had he not, and met with you and me and Mr. Hudson and others in your office?

(Testimony of Lloyd Russell Reeve.)

A. I would say he met with Mr. Hudson and I, if that is what you want.

Q. Were there others there?

A. Yes, there were others there.

Q. On that occasion, was I not requested to sign a consent for the Pacific Palmdale Development Company for you to pay 20 percent of the profits of the deal to Mr. Hayes for his obtaining the bond?

A. At my request, you acted as an attorney to draw up the papers.

Q. Did I not? You requested that, did you not, Mr. Reeve?

A. Yes, I asked you as an attorney if you would draw the paper legally.

Q. Do you have the document that I signed at that time?

A. I believe I have a photostatic copy of it.

Q. Do you know where the original is?

A. No, I don't.

Q. Mr. Reeve, you say you requested me as an attorney [49] to prepare that?

A. That is right.

Q. I had never represented you before, had I?

A. No.

Q. Did I ever bill you for that service?

A. No.

Q. Have you ever paid for it? A. No.

Q. Have you requested me to do legal work for you since that time? A. No, not that I recall.

Q. I show you this document which purports to be dated May 3rd and ask you to examine it and

(Testimony of Lloyd Russell Reeve.)

state whether below the "Lloyd R. Reeve, Inc., a corporation" appears your signature.

A. That is right.

Q. Do you recall that I signed below that "Pacific Palmdale Development Corporation", by me?

A. That is right.

Mr. Granger: I would like to offer this as our exhibit.

Mr. Bartley: I will object to the introduction of the document. The document fails to bear any corporate seal. It merely contains the signature purportedly that of a corporation. There is no corporate seal attached anyplace to the document by either of the two corporations that [50] purportedly executed it.

The Referee: Is that the only basis for your objection to the introduction?

Mr. Bartley: Yes, your Honor.

The Referee: It is overruled, and the document is received as Respondent's Exhibit No. A.

Q. (By Mr. Granger): Now, Mr. Reeve, do you remember the occasion on which you paid $15,000 to Mr. Hudson? A. I remember it, yes.

Q. Do you remember that you requested a consent to that payment from the Pacific Palmdale Development Company? A. That is right.

Q. That was signed by me, was it not?

A. I don't recall.

Q. It was presented to you, was it not? You have it in your files, do you not?

A. I believe so, yes.

(Testimony of Lloyd Russell Reeve.)

Q. On the occasion of the payment of $5,000 to you by Mr. Hudson, the same thing happened, did it not? You asked me for the consent of Pacific Palmdale Development Company and I gave it to you, did I not?

A. I don't know. I don't recall that.

Q. Is your memory that you paid $5,000 to Mr. Hudson without the consent of the Pacific Palmdale Development Company?

A. No, it isn't that. You asked me about your [51] signature, didn't you? You asked me whether I knew that you signed it, didn't you?

The Referee: Will you read the last question and answer?

(Whereupon the requested question and answer were read by the reporter.)

Q. (By Mr. Granger): You received at that time what you thought was the consent of the Pacific Palmdale Development Company, didn't you, Mr. Reeve, at the time of the payment of the $15,000 and at the time he was paid the $5,000?

A. Yes, I think you are right.

Q. To that extent, you did have negotiations with me, purporting to represent the Pacific Palmdale Development Company, did you not?

A. Yes, yes.

Q. Do you remember, Mr. Reeve, that you were presented with the statement from Mr. Hayes and Mr. Ware for 20 percent of the profit to respond to that agreement of May 3rd?

(Testimony of Lloyd Russell Reeve.)

A. A statement from them?

Q. Yes. A. No, I don't think so.

Q. Do you remember when they were in your office undertaking to get a settlement from you——

A. That is right. [52]

Q. (Continuing) ——for that 20 percent that you were to pay to them? A. Yes.

Q. Do you remember that I was present at that settlement?

A. Mr. Hudson and I negotiated the settlement with Mr. Hayes and Mr. Ware and their attorney.

Mr. Granger: I move to strike the witness's answer as calling for his conclusion to negotiate the settlement.

The Witness: It is a statement of fact, so——

Mr. Granger: Your Honor, may I——

The Referee: Will you finish your answer?

Mr. Granger: I ask for a restatement of the question.

The Referee: Finish your answer.

The Witness: Mr. Hudson and myself, Mr. Hayes, Mr. Ware and their attorney, we negotiated the settlement of their claim against the Lloyd R. Reeve, Inc., for their sum due them. Mr. Granger was called into the deal by Mr. Hudson, because of a disagreement. What the connection Mr. Granger has with Pacific Palmdale, I don't know.

The Referee: The motion to strike will be denied.

Q. (By Mr. Granger): Mr. Minton was there at that time, was he not?

A. Yes. He was called in later.

(Testimony of Lloyd Russell Reeve.)

Q. You had requested him to prepare some papers to be executed, had you not? [53]

A. Yes, that is right.

Q. I hand you this document and ask you to examine it, Mr. Reeve, and state whether or not that is not one of the copies of the document you then requested Mr. Minton to prepare for you and which he did prepare in accordance with your request.

A. Is that the document?

Q. I am asking you, Mr. Reeve; not Mr. Minton.

The Referee: The question is propounded to you, Mr. Witness.

The Witness: I wouldn't say.

Mr. Granger: I offer it for identification, your Honor.

The Referee: The document captioned "Mutual Release" is marked as Respondent's No. B for identification.

Q. (By Mr. Granger): Mr. Reeve, on the Monday following the Sunday that Mr. Hayes was down from Portland, the 3rd of May, 1954, your bond was filed with the Government, was it not, under this contract with the Commodity Credit Corporation?

A. I don't remember as to the date, no.

Q. Do you remember it was filed the day after the Sunday that Mr. Hayes was here?

A. I won't say it was.

Q. Do you remember that on that Sunday night when he was first here, he flew to San Francisco?

Mr. Bartley: I will object to this as irrelevant, your Honor.

(Testimony of Lloyd Russell Reeve.)

The Witness: I don't know what happened to Mr. Hayes.

Q. (By Mr. Granger): Well, at any rate, Mr. Reeve, after you filed the bond, Mr. —withdraw that.

When did Mr. Hudson go to Sacramento to undertake performance of the contract?

A. I don't remember the date.

Q. Was it before or after your bond was filed with the Government? A. Before.

Q. Before? A. Yes.

Q. Would you say it was as early as the 28th day of April? A. I wouldn't say.

Q. Do you remember that he came down from Sacramento to meet with Mr. Hayes that Sunday, on May 2nd or 3rd?

A. I don't know that he did.

Q. Now, do you recall issuing a check to Mr. Hudson for $1,000, which is referred to in this petition? — A. That is right.

Q. Was that not issued by you with the intention to refund expenses he had incurred at Sacramento? A. No, no.

Q. Is your answer that it was not? [55]

A. It was not.

Q. Can you tell the Court what work was necessary to be done at Sacramento under this contract?

A. Well, Mr. Hudson had agreed with me that he knew all about the grain bin deal, he knew how to do it, he knew where the lumber was, he knew

(Testimony of Lloyd Russell Reeve.)

where the deal was, he knew all the angles of the thing, and he was going to set the plant up and execute the management of the plant in Sacramento.

Q. He did go to Sacramento for that purpose?

A. He went there for that purpose.

Q. That was late in April?

A. I don't recall the dates, no.

Q. That was before your bond was up?

A. Yes, yes.

Q. How long did he continue up there?

A. I don't know.

Q. Do you remember?

A. I have the records in my office. I don't have them with me today.

Q. He continued up there until the bins were shipped, did he not?

A. Not all the time, no. Not all the time.

Q. Off and on, he was up there?

A. Yes, he went up there a couple of times.

Q. Would you say that he rented the site for the [56] facilities?

A. No, he did not rent the site.

Q. Did he negotiate for the lumber, for the purchase of the lumber? A. No, he did not.

Q. Did he negotiate with the labor union for the labor? A. No.

Q. Did he negotiate with the union halls to provide the workmen? A. No.

Q. Did he arrange for the cars to be on the sidings for shipment? A. No, he didn't.

Q. Did he make a determination of the freight

(Testimony of Lloyd Russell Reeve.)

rates that were to be involved for the shipment of the bins back East? A. No, he did not. No.

Q. Did he set up any of the equipment?

A. I don't believe he did.

Q. Who did that? I will withdraw that question. Do you know what he did up at Sacramento?

A. I have heard what he did.

Q. What is that?

A. I wasn't there, so I don't know.

The Referee: Did he tell you what he did up in Sacramento? [57]

The Witness: No, but I was told what he did by other people.

The Referee: Did Mr. Hudson tell you what he did?

The Witness: No, he didn't.

Q. (By Mr. Granger): Mr. Reeve, you are in litigation with Pacific Palmdale Development Company over this very contract, are you not?

A. I think so, yes.

Q. You have known of this bankruptcy proceeding since April of 1954, have you not?

A. I don't recall just when it was, Merrill, that I first learned of it. It was after the contract was signed, that I know.

Q. Shortly after the contract was signed, you knew of it?

A. I think you and John Hudson came to my office and told me you had come from the Bankruptcy Court. You——

Q. Mr. Reeve, ——

(Testimony of Lloyd Russell Reeve.)

The Referee: Let the witness finish his answer.

The Witness: What date it was, I don't know.

Q. (By Mr. Granger): Mr. Reeve, as long as a year ago in Mr. Minton's office, did you not threaten that if some concession was not made to you in connection with receivership in that action, that you would inform the Bankruptcy Court of the circumstances of this contract? A. I did not.

Q. That litigation is still pending, is it not? That is, the litigation between you and Pacific Palmdale Development Company. A. Yes.

Q. It is set for trial on October 10th?

A. That, I don't know.

Q. You don't know that?

A. I don't know the date, no.

Q. And did you know, or do you remember that you were subpoenaed to have your deposition taken next Saturday in Santa Monica?

A. That is right.

Q. Did you know that last Monday there was a matter pending before the Superior Court in that action to require you to exhibit the books and records in that case to a representative of the Pacific Palmdale Development Company?

A. That is right. That is right.

Q. Isn't it true that within the last 90 days that you have told Mr. Hudson that if that difference between you and Pacific Palmdale Development Company were not settled for $15,000, that you would inform the Bankruptcy Court of the——

Mr. Bartley: I will object, your Honor.

(Testimony of Lloyd Russell Reeve.)

Q. (By Mr. Granger): (Continuing) ——facts and circumstances relative to Mr. Hudson's connection with Pacific Palmdale Development Company and the grain bin project? [59]

The Referee: The objection is overruled.

Q. (By Mr. Granger): Did you not state that?

A. Did I state what?

Q. If Mr. Hudson's and the Pacific Palmdale's interests in that matter were not settled for $15,000, you would report the whole matter to the Bankruptcy Court in the matter of the estate of Hudson?

A. That is a lie. I never said that in my life.

Q. Were you present to hear Mr. Minton's threat of receivership in that proceedings, that he would take the matter to the Bankruptcy Court on account of Mr. Hudson?

A. I never heard that.

Q. Do you know that?

A. I never heard that. Can I answer that further?

Q. Isn't it true? Now, will you explain to me——

Mr. Minton: Your Honor, I wish to state that——

Mr. Granger: We will have you on the stand, too.

The Referee: Just a moment. The witness may explain his answer. The witness has asked permission to explain his answer.

Please proceed.

The Witness: Mr. John Hudson came to my office in the presence of witnesses and made a propo-

(Testimony of Lloyd Russell Reeve.)

sition to me that he needed money, and that he would settle for $15,000.

I said, "John, I had never considered for one moment settling with you for anything but what you had [60] coming, but if you need money, if you will give me time to consult my tax people, I will give you an answer." And that was supposed to have been on Friday.

Q. (By Mr. Granger): What Friday, Mr. Reeve? A. I don't know what Friday it was.

The Referee: You may finish your answer.

The Witness: I consulted my tax people, who were out of town. I believe it was some holiday or something, and it took a little longer, and John came into my office and I said, "Well, John, I have got an answer for you."

And, you know, he told me then that his proposition was that he wouldn't settle, for one thing, and that all his proposition was for was to draw me out and get me to make a statement that I would settle for $15,000.

The Referee: Counsel, did you want to make a statement?

Mr. Minton: I wish to make a statement for the purpose of the record. I am Carl W. Minton of Miles & Minton. My firm represents Mr. Lloyd R. Reeve, the gentleman who is on the witness stand. I don't know what my official standing is before this Court.

The Referee: Are you making an objection, counsel?

(Testimony of Lloyd Russell Reeve.)

Mr. Minton: No. I would like to ask and to ascertain from your Honor if I do not have a standing before this Court to, at least, interpose objections to statements that might cast aspersions upon my firm and my client, because this [61] particular proceeding has a restraining order in a litigation that I am attorney of record for.

The Referee: Counsel, you are not a counsel of record in this matter?

Mr. Minton: Not in this matter.

The Referee: And the witness is being examined solely as a witness in the proceeding brought by the Trustee in Bankruptcy——

Mr. Minton: That is right.

The Referee: (Continuing) ——to restrain the prosecution of an action by Pacific Palmdale Development Company against Lloyd R. Reeve, Inc., and others.

Mr. Minton: That is right, your Honor.

The Referee: I don't believe, unless you are counsel of record in this proceeding, that you have any standing before this Court.

Mr. Minton: I have kept out of it, but I do wish to protect myself in the record when I am accused of something that is not true.

The Referee: If the attorney for the Trustee wishes to call you as a witness, he has the privilege to do so.

Mr. Minton: Thank you, your Honor.

The Referee: Unfortunately, you are not attor-

(Testimony of Lloyd Russell Reeve.)

ney of record and you cannot make any objection or statements to the Court.

Mr. Minton: Very well. [62]

Q. (By Mr. Grainger): Mr. Reeve, as far as you know, were the current proceedings, this order to show cause, instigated by your communication to the Trustee in Bankruptcy of your relationship with Mr. Hudson? A. No, no.

Q. Do you know whether or not your attorney made that communication?

Mr. Bartley: Your Honor, I am going to object to this line of questioning. It is entirely irrelevant.

The Referee: The Court is going to sustain the objection, because the law is well established that the motives for bringing an action are immaterial. It is the merits of the action which are determinative and not any motives.

Mr. Granger: The only——

The Referee: Assuming for the sake of discussion that he did communicate the fact to the Trustee in Bankruptcy and the Trustee in Bankruptcy does not have a meritorious cause, it does not make any difference. It may go in some degree to bias and prejudice.

Mr. Granger: That is the point entirely, your Honor, as I see it. That is the point entirely. I offer the evidence only as bearing upon the bias and interest of this witness in the matter.

The Referee: The Court's former ruling is vacated and the objection will be overruled and the witness may answer [63] the question.

(Testimony of Lloyd Russell Reeve.)

Q. (By Mr. Granger): As I understand it, your testimony, Mr. Reeve, is that you did not communicate the relationship of yourself and Mr. Hudson to the Trustee in Bankruptcy in this case. Is that correct?

A. I have never done anything. I will say this to qualify that: I don't know whom and I don't know their names, but over the past year and a half, I have received numerous telephone calls concerning John Hudson and his connection with me.

Mr. Granger: Your Honor, I move to strike that as not responsive and immaterial.

The Referee: The motion is denied.

Mr. Granger: Could I have just a moment, your Honor?

The Referee: You may.

Q. (By Mr. Granger): There is one more question I would like to ask you, Mr. Reeve. You stated that the profits from this venture would approximate $100,000. Is it not true that the profits from the venture at the end of the fabrication period at Sacramento show about $240,000?

A. I don't know.

Q. You don't know that?

A. No, I don't know that.

Q. Could you estimate what the profit was on the project as of the close of the fabrication period at Sacramento? [64]

A. No, because of a bookkeeping setup there were certain charges made that should have been

(Testimony of Lloyd Russell Reeve.)

made against the fabrications, which will come out in the audit that is being made.

The Referee: Were these grain bins erected in Sacramento?

Mr. Granger: They were fabricated in Sacramento and shipped to various midwestern states. It was what they term covenanted agreements. The covenanted erection agreement was appended to the bid originally.

I think that is all at this time.

The Referee: Do you have any redirect examination?

Mr. Bartley: Yes, your Honor.

Redirect Examination

Q. (By Mr. Bartley): Mr. Reeve, this contract of April 7, 1954, which the Court heretofore read a couple of phrases of that contract, one of which related to the fact that Mr. Hudson and the availability of Mr. Hudson was the inducing consideration of the contract, and the other was that Mr. Hudson was to be available to procure and perform any such contracts from the Commodity Credit Corporation.

Mr. Reeve, what was the major inducement to Lloyd R. Reeve, Inc.,——

Mr. Granger: I object to that question. [65]

Q. (Continuing) ——in so far as entering into this contract with Pacific Palmdale Development Company?

Mr. Granger: I object to that as being incompe-

(Testimony of Lloyd Russell Reeve.)

tent, irrelevant and immaterial. The contract is expressive of itself of that consideration.

The Referee: The objection is sustained.

Q. (By Mr. Bartley): Mr. Reeve, in the services to be performed by Mr. Hudson as furnished to Lloyd R. Reeve, Inc., under this contract of April 7, 1954, to the best of your ability, can you estimate what portion of the services of Mr. Hudson were performed in procuring contracts and what percentage of the services were performed in the performance of the contracts after procurement?

Mr. Granger: I object to the question as being incompetent, irrelevant and immaterial and as calling for an opinion and a conclusion of the witness, and invading the province of the Court.

Mr. Bartley: Your Honor, by way of explanation, as heretofore stated, this contract is entirely silent on that point.

The Referee: The Court understands your purpose, but you are asking him to estimate without asking him if he knows what portion of Mr. Hudson's time was devoted to them. You may proceed on that point, if you wish. That is why I have sustained the objection.

Mr. Bartley: The question does not relate to the [66] portion of time Mr. Hudson spent, but rather to the portion of his services as a total as distinguished from hours, his knowledge and so forth, with the company in the procurement of the contract and the portion in performance. It does not relate to the number of hours in performance spent by Mr.

(Testimony of Lloyd Russell Reeve.)

Hudson. The testimony heretofore given by this witness is that his knowledge in the erection and procurement of bids is what they were looking for; that is, the Reeve, Inc. It is my intent and I will reword the question if necessary, to get at that as distinguished from the man hours spent by Mr. Hudson on the job, the percentage of his services performed which were in this contract, the percentage represented by procurement and percentage by performance. The hours might be entirely disproportionate as to the value of the services performed.

The witness has already testified that he does not recall how many hours the man was on the job in the performance.

The Referee: The Court is a little uncertain by what you mean by your explanation in view of the testimony of this witness that he and Mr. Hudson and others, both journeyed to Washington, stayed at the Statler Hotel there and used their joint endeavors to procure the contract.

Mr. Bartley: Yes, your Honor.

The Referee: Now, what are you trying to prove by [67] your last question?

Mr. Bartley: Merely that if testified to by the witness, that this is the fact: That in this particular situation, the major reason for the employment of Mr. Hudson was to procure contracts; that anyone could have supervised in the erection; that only Mr. Hudson and the most valuable services performed by Mr. Hudson in this entire contract, the major

(Testimony of Lloyd Russell Reeve.)

portion of the services required, were the procurement of these contracts.

The Referee: Counsel, on the direct examination and on the cross examination, the witness has testified that Mr. Hudson represented to him that he was familiar with the procurement of this type of contract and they journeyed to Washington and did secure a contract.

Mr. Bartley: Yes, your Honor.

The Referee: Now, what difference does it make how much percentage of each man was devoted to procurement and how much to production? The Court does not understand what you are getting at and I will be happy to reverse my ruling if I am in error.

Mr. Bartley: The only difference it makes is in anticipating opposing counsel. The opposing counsel has already raised the question as to proof of alter ego.

The Court has stated that it makes no difference whether the services were performed before or after the bankruptcy proceedings. [68]

The Referee: I don't know that the Court did so point out.

Mr. Bartley: There was a discussion on this matter.

The Referee: Counsel for respondent stated that it was his position that since most of the services were rendered after bankruptcy by Mr. Hudson that it was not part of the bankruptcy estate. The Court did not indicate whether it did or did not agree with

(Testimony of Lloyd Russell Reeve.)

that position. The Court merely received the statement of counsel.

Mr. Bartley: Yes, your Honor. So on that particular point, the Trustee has attempted to get at the particular question of what proportion it was. I have attempted to point out to the Court that the Trustee is informed that the major inducement for this entire contract was the procurement of the contract and not the performance of the contracts, and that the major reason that Mr. Hudson was made available was to procure the contract and his particular knowledge of who to contact in Washington and his particular knowledge of how to go about getting the contract.

The Referee: Is it the position of the Trustee that Mr. Hudson or the Pacific Palmdale Development Company was not required to do anything under the contract other than to procure the contract?

Mr. Bartley: No, your Honor, but it is our position and we think this witness can testify that the services to [69] be performed after the procurement of the contract were nominal in relation to the value of services in procuring the contract.

The Referee: Well, the objection is overruled. If the witness understands the question, he may answer it. Very frankly, the Court is not clear as to the question.

Do you understand the question, Mr. Witness?

The Witness: Well, I don't know how to answer it. I would say this. Let me say this.

Mr. Granger: I would like to make a record of

(Testimony of Lloyd Russell Reeve.)

an objection before the witness answers. I just don't know the form of my objection as heretofore made, but the question is objected to as being incompetent, irrelevant and immaterial, as calling for a fact outside the issue, as purporting to invade the province of the Court, and calling for opinions, estimates and conclusions of this witness on matters which he has not shown to be qualified to testify on.

Mr. Bartley: Your Honor, this is the only man who knows, and the only expert for that matter, as to what the agreement was, the reason for the employment of Mr. Hudson and the nature of his duties to be performed under this contract. The contract is fragmentary, entirely fragmentary, as to the nature of the services to be performed. It merely spells out two types of services and elaborates no further.

The Referee: The objection is overruled. [70]

The Witness: Can I answer that in my own words, sir?

The Referee: Yes.

The Witness: John Hudson presented to me an envelope addressed to the Sierra Construction Company, which contained the bid and the bid forms and specifications for the grain bin deal. We went back to Washington and there were certain things that had to be done. Mr. Hudson contacted the engineer. He had a plan of the bin and when we got back there, we had to write the specifications for the bin. I believe he had to make some changes in it. I know we all scrambled around there. We bought a drawing

(Testimony of Lloyd Russell Reeve.)

set to revise the drawings that he had and in due time, we compiled a bid and presented the bid. That took, I think, the best part of two days and a half. I believe I am right—now, I can be wrong on the dates.

The Referee: Was Mr. Hudson to do anything toward the performance of this contract after the procurement of the bids from the Government?

The Witness: All I was supposed to do was to handle the financial setup of the bins. Mr. Hudson was supposed to have had an organization that he would move in to build the bins.

Mr. Granger: Now, your Honor, I move to strike the witness's testimony that Mr. Hudson was supposed to have an organization to move in.

The Referee: The answer is stricken. [71]

Mr. Reeve, the Court is not interested in your conclusions. The Court draws the conclusions from what you tell the Court you said and what Mr. Hudson said and what other persons said. Now, the Court realizes that it is difficult for you or any other witness to give a letter perfect repetition of a conversation, but you certainly can and you must give us the substance of what Mr. Hudson said and what you said and what other persons said in connection with this matter. Do I explain to you what we are trying to get here?

The Witness: I am going to say to the Court that I am trying to be as honest as I can. I have no axe to grind with Mr. Hudson or with anybody else.

(Testimony of Lloyd Russell Reeve.)

Mr. Granger: I move to strike that from the record.

The Referee: Mr. Reeve, the Court is not questioning your honesty. The Court is instructing you that you cannot give conclusions, but you must state what occurred. Now, counsel has asked you for certain statements and if you don't understand the question, we will repeat it or rephrase it.

Now, we have had a lot of discussion here, so counsel will please rephrase your question.

Q. (By Mr. Bartley): Mr. Reeve, was there any discussion with Mr. Hudson as to what percentage of his services were to be in connection with the procurement of the contract as distinguished from performance after you had been awarded [72] the contract? A. No. No.

Q. Was there any discussion as to the duties that Mr. Hudson was to have in the performance of the contract after a contract had been awarded?

A. Yes.

Q. And what duties were Mr. Hudson to perform after the procurement of a contract?

A. Mr. Hudson was to spend his full time to the execution of the contract in every way that he could. He was supposed to have known where the lumber was.

Mr. Granger: Just a moment.

The Referee: Did he tell you where the lumber was?

The Witness: Yes. I am repeating his words. He said that he knew where the lumber was; that he had

(Testimony of Lloyd Russell Reeve.)

a crew of men that had worked with him on the bins previous and he would get them in here and operate the plant. He didn't do it because——

Mr. Granger: Just a moment. I move to strike that last as not responsive and going beyond the scope of the question.

The Referee: That last response commencing with "he didn't" is stricken as not responsive to the question.

Q. (By Mr. Bartley): Mr. Reeve, did Mr. Hudson perform these services?

A. That is a question. That is a question to debate. [73]

Q. Did he perform the services you have just related?

Mr. Granger: I object to that question for the reason that the witness has already testified that he was not at Sacramento when Mr. Hudson was there and that he does not know what Mr. Hudson did.

The Witness: I do know that the duties that I expected Mr. Hudson to do and that he agreed to do, he did not do.

Mr. Granger: I move to strike that as a conclusion of the witness and not responsive to any question. It is a voluntary statement of the witness.

The Referee: The motion is granted.

Q. (By Mr. Bartley): Mr. Reeve, do you have any way of determining whether or not Mr. Hudson performed the services which you have mentioned?

A. What is that?

Q. Did you have any way of determining whether

(Testimony of Lloyd Russell Reeve.)

or not Mr. Hudson performed the services which you have mentioned?

A. Yes. I had a way of determining.

Q. What method did you have of determining whether or not he performed those services?

A. I had to make other arrangements and do them myself.

Mr. Granger: I move to strike that as a conclusion of the witness.

The Referee: The motion is granted.

Q. (By Mr. Bartley): Did you observe whether or not the work which Mr. Hudson was to have performed was actually [74] performed?

Mr. Granger: That is objected to as calling for a conclusion of the witness.

The Witness: What was that? Let me have that again.

Q. (By Mr. Bartley): My question is: Did you have occasion to observe whether or not the work which was to have been performed by Mr. Hudson was actually performed?

Mr. Granger: That is objected to as calling for an opinion and conclusion of the witness and it is incompetent, irrelevant and immaterial.

The Referee: The objection is sustained.

Very frankly, the Court does not know the purpose of the last three questions nor does it understand the materiality thereof.

Mr. Bartley: Your Honor, the only materiality and the only purpose is to show that if any services were performed by Mr. Hudson after the filing of

(Testimony of Lloyd Russell Reeve.)

the petition in bankruptcy, that the terms and provisions of the contract were not carried out.

The Referee: Why don't you ask the witness whether any services were performed and what they consisted of after bankruptcy.

Mr. Bartley: Yes, your Honor.

Q. Mr. Reeve, were any services performed after the signing of the contract by Mr. Hudson other than the services which you have heretofore elaborated on at [75] Sacramento?

A. Well, again,——

The Referee: Other than Sacramento and Washington. Is that what you mean?

Mr. Bartley: That is correct, your Honor.

The Witness: I can't answer that.

The Referee: You may answer that yes or no. After you have so answered, you may explain, if you deem it necessary.

The Witness: I would say yes. But I say it in this way: That on this entire proposition, as far as the Lloyd R. Reeve, Inc. is concerned and Lloyd R. Reeve personally is concerned, Mr. John L. Hudson has been asked for counsel and collaboration on everything that is entirely on the contract.

Q. (By Mr. Bartley): Did he furnish such consultation? A. Yes.

Mr. Bartley: No further questions, your Honor.

The Referee: When did you first meet Mr. Hudson?

The Witness: In the early part of April.

The Referee: That was in the office of——

(Testimony of Lloyd Russell Reeve.)

The Witness: Liff and Kimm, architects.

The Referee: At that time, what was said by Mr. Hudson and what was said by you and by Mr. Kimm, if anything?

The Witness: Well, I think, your Honor, as far as Oscar Liff is concerned, their participation in our [76] conversation was the introduction.

The Referee: Very well. Then, what did you say and what did Mr. Hudson say, and as near as you can, try to state what the substance of what each of you said to the other was.

The Witness: Well, Mr. Hudson had this invitation to bid.

The Referee: What did he say? Did he say, "I have an invitation to bid"?

The Witness: Yes, he said, "I have an invitation to bid on grain bins," and the conversation went this way: That he had participated in grain bin deals of this kind, I believe, in 1950, in 1951, and that he had gone broke and he was looking for somebody to finance the deal, and he told me that he had another contractor he had to see that night and that he would call me the next day and let me know how he had come out with him.

The Referee: Did he ask you to do anything? Did you offer to do anything? Did you say anything?

The Witness: I told him I would like to look his proposition over and that when he got his answer, to call me, which he did. He called me the next day.

The Referee: Did you meet him? Did you meet with him the next day?

(Testimony of Lloyd Russell Reeve.)

The Witness: Yes, he brought his files.

The Referee: Where did you meet? [77]

The Witness: At my office at 1150 Wilshire Boulevard.

The Referee: Who was present besides the two of you?

The Witness: My secretary, and I believe a man named Arlin.

The Referee: Marlin?

The Witness: No. Arlin, A-r-l-i-n.

The Referee: On that occasion, what did Mr. Hudson say to you?

The Witness: Our general conversation was about getting together on this grain bin deal.

The Referee: Well, instead of saying what the general conversation was, tell the Court as near as you can what Mr. Hudson said to you and what you said to him.

The Witness: Well, I wouldn't want to——

The Referee: As near as you can, tell us the substance of the conversation. You are an intelligent man. Tell us what Mr. Hudson said to you and what you said to him.

The Witness: The conversation or the testimony I can give is purely in generalities because John was explaining his position to me.

The Referee: Now, just a minute. What did John say? The word "explanation" is a conclusion. What did Mr. Hudson say to you; that he was not able to get anyone interested?

The Witness: Yes, that is what he said.

(Testimony of Lloyd Russell Reeve.)

The Referee: Tell the Court what he said.

The Witness: They did not get together and he was [78] open for the deal.

The Referee: What did he say the deal was?

The Witness: He said the deal was that we would put Mr. Wilbur on ten percent of the profit, and we would put Liff and Kimm on five percent of the profit.

The Referee: Did he tell you who Mr. Wilbur was?

The Witness: Yes. He told me who Mr. Wilbur was.

The Referee: What did he say about Mr. Wilbur?

The Witness: And that he wanted to take him to Washington.

The Referee: What did he say about Mr. Wilbur?

The Witness: Mr. Wilbur was to help him get the deal. He was going to furnish the head work for the deal.

The Referee: Go ahead. What else was said on this occasion?

The Witness: Then, we talked about our split of the profit.

The Referee: What did you say and what did he say as to the split of the profit?

The Witness: It was his proposition.

The Referee: What was his proposition?

The Witness: That we were to split after the ex-

(Testimony of Lloyd Russell Reeve.)

penses, all the expenses were paid. We would split fifty-fifty.

The Referee: What else was said and done at that time?

The Witness: We looked over the plans and we made certain estimates on it. [79]

The Referee: Did Mr. Hudson have a set of plans?

The Witness: Mr. Hudson had a set of plans, yes, of his bins.

The Referee: Did you examine those plans?

The Witness: Yes. We looked them over and we made some estimates and we took off some material lists that day, I believe the next day.

The Referee: Did you tell him that you would go along on the deal?

The Witness: Yes. I told him I would go along on the deal.

The Referee: When did you next meet?

The Witness: I believe the next day, because we had very little time.

The Referee: Where did you meet the next day?

The Witness: At my office.

The Referee: Who was present on that occasion?

The Witness: That I don't remember.

The Referee: As far as you can recall, the two of you, Mr. Hudson and yourself, were present?

The Witness: That is right.

The Referee: What did Mr. Hudson say to you and what did you say to him?

(Testimony of Lloyd Russell Reeve.)

The Witness: Well, about the same conversation as——

The Referee: Tell us what was said. You met didn't meet for the third time just to say the same thing. [80]

The Witness: Well, it is all general conversation.

The Referee: What was the conversation?

The Witness: The grain bin deal.

The Referee: Was the Pacific Palmdale Development Company brought into the conversation up to that time?

The Witness: That I cannot specifically say.

The Referee: Do you recall whether it was or not?

The Witness: I don't recall at that time whether it was or not. There was an awful lot of conversation.

The Referee: Very well. At some time in the conversations between you and Mr. Hudson, the name of Pacific Palmdale Development Company was discussed. Is that correct?

The Witness: Yes, sir. It came up.

The Referee: Did you ask him who it was or why the company was necessary?

The Witness: Yes. I asked him who the Pacific Palmdale Development Company was.

The Referee: What did he say?

The Witness: Then, the conversation got into Mr. Phil Bloom and he had to take his attorney along, which I have testified before. His attorney, he

(Testimony of Lloyd Russell Reeve.)

had to take into the corporation, who he paid 12½ percent of his gross take for his services.

The Referee: Do you recall how many conversations you had before you first heard of Pacific Palmdale Development [81] Company?

The Witness: Well, I think it was, at least, on the third day. I don't recall of anything before that. I don't recall. It might have been. I don't know.

The Referee: Was the Pacific Palmdale Corporation mentioned at all prior to the time that you told him you were interested in the deal and would go along with him on the deal?

The Witness: I don't believe so. I don't believe so.

The Referee: You are quite certain of that?

The Witness: I am fairly certain of that.

The Referee: Had you or your company, Lloyd R. Reeve, Inc., ever had any experience in the building of grain bins?

The Witness: No.

The Referee: Did Mr. Hudson tell you whether he had had such experience?

The Witness: Yes, and he produced his records that he had.

The Referee: Did you tell him that you were entering into this contract because of his experience in the construction of grain bins?

The Witness: That was the understanding.

The Referee: Did you so tell him?

The Witness: Yes.

The Referee: Would you have entered into this

(Testimony of Lloyd Russell Reeve.)

contract had it not been for the representation to you by Mr. Hudson [82] of his experience in the building of grain bins?

The Witness: No. No. Absolutely not.

The Referee: Did you have any dealings in connection with this contract other than with Mr. Hudson, or his attorney, Mr. Merrill Granger?

The Witness: No.

The Referee: Did Mr. Hudson have any dealings with you or your company, Lloyd R. Reeve Company, excepting with you or your attorney?

The Witness: No.

The Referee: You may proceed, gentlemen.

By the way, gentlemen, when we finish with any questions with this witness, we will select a date of continuance, but I think you should finish with this witness.

Mr. Granger: On that subject, there is a matter I would like to take up with the Court. Is it determinable now as to what date this might be continued to? The importance of that question is that Mr. Reeve is under subpoena to have his deposition taken in Santa Monica Saturday and it is about an all-day job and I think it is very important as a preliminary to the trial of this case and the case between these parties in Superior Court on October 10th.

More than that, when we were served with a restraining order to prevent further prosecution of that [83] action, I felt obliged to call the Judge to tell him that that matter, which was on his calendar

(Testimony of Lloyd Russell Reeve.)

then, in order to require the Reeve corporation to submit their books and records for inspection, would have to either go off calendar or be continued for a week. I think it was continued until next Monday.

The Referee: Very well. Let us finish with this witness and we will take up your question, the determination of your question.

Do you have any further questions?

Mr. Granger: I have one or two further questions, your Honor.

Recross Examination

Q. (By Mr. Granger): Mr. Reeve, was it your expectancy that the agreement between you and Mr. Hudson would be drawn up between your attorneys and his attorney? A. Yes.

Q. At that time?

A. No. Well, let me see. I will say yes.

Q. What is that? A. Yes.

Q. Exhibit 1, which was introduced by the Trustee, is the only agreement which was drawn with reference to your negotiations with Mr. Hudson, was it not? [84] A. Yes.

Q. At the time you held your negotiations and conferences with Mr. Hudson, did you have any expectancy to go to Washington and embark on this deal without a written contract?

A. I said to John Hudson——

Mr. Granger: I would ask the reporter to read the question to him and call for an answer to that question from Mr. Reeve.

(Testimony of Lloyd Russell Reeve.)

(Whereupon the question was read by the reporter.)

The Referee: Do you understand the question?

The Witness: Yes.

Q. (By Mr. Granger): Was it your expectancy to go to Washington and embark on the grain bin deal with an oral contract with Mr. Hudson?

The Referee: The question has already been asked and answered.

Q. (By Mr. Granger): But you did submit all of this data to your attorney, Mr. Minton, and on the 7th of April, you signed a written contract with Pacific Palmdale Development Company, which is Trustee's Exhibit No. 1, did you not? A. Yes.

Q. Did you intend, in your performance of matters with reference to the grain bin, the fabrication and erection of the grain bin deal, to perform those under the written [85] agreement, which is Exhibit 1? A. Yes, sir.

Q. Your answer is yes? A. That is right.

Mr. Granger: That is all.

The Referee: How long do you gentlemen anticipate that it will take you to conclude this matter?

Mr. Bartley: There will be two other witnesses. I am going to call Mr. Minton and also, I will examine Mr. Hudson under 21-j of the Bankruptcy Act, and I anticipate for the Trustee's side of the case that it will probably take about an hour and a half

and at the rate we have been going, I would estimate the over-all time to be about four hours.

Mr. Granger: I would expect that we would consume as much time as we already have. Mr. Hudson has to cover a little more data yet that has not been introduced in the testimony.

Mr. Bartley: May it please the Court, I am in trial this coming Friday and I am free tomorrow. However, I have been in trial constantly for nine days and would appreciate it if the matter were not set for tomorrow. I do need one blank day. Any other day but this coming Friday will be satisfactory.

The Referee: The Court has a short matter on Monday, September 19th, the sale of some assets, and it can be set [86] for further hearing on that date, if it is agreeable to counsel. Obviously, if it is continued until that day, the restraining order will have to remain in force and effect.

Mr. Granger: Can it be modified to allow for that examination and even for prosecution of the order for examination of those books and records? The Trustee should prevail in this matter. It would be as much for his benefit as for Pacific Palmdale Development Company.

We feel that those things are necessary for the proper presentation of this matter. Another thing I forgot to tell your Honor is that this contract, Exhibit 1, calls for an audit of these books and records by Price Waterhouse and that was ordered quite late in the history of the case and is just being completed. In fact, I think by now, the inspection and

examination by Price Waterhouse has been completed and they are working on their reports.

Now, our position is that they state that they are accountants. They are not detectives. We felt that it was important that we have an examination and inspection of these books and records before we get to trial and before Price Waterhouse complete their audit, and we cannot get to these books and records.

We would like to do it by reason of an order next Monday so we can take Mr. Reeve's deposition. Our time before trial on October 10th is quite limited.

The Referee: The matter will be continued until September 19, 1955 at ten o'clock and the restraining order will continue in full force and effect in all particulars until the disposition of the order to show cause in this matter.

Mr. Bartley: Thank you, your Honor.

The Referee: All witnesses are ordered to return on September 19, 1955 at ten o'clock without further order or notice.

(Whereupon the hearing was concluded.)

[Endorsed]: Filed Oct. 25, 1955. [88]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF HEARING ON ORDER TO SHOW CAUSE, Monday, September 19, 1955, and Thursday, September 22, 1955.

Before the Honorable Joseph J. Rifkind, Referee in Bankruptcy.

Appearances: For the Trustee: Craig, Weller & Laugharn, By: William E. Bartley, Esq. For the Bankrupt: Merrill L. Granger, Esq. and William M. De Falla, Esq. [1].

Monday, September 19, 1955. 10 A.M.

The Referee: Are you ready to proceed in the John Lucas Hudson, Sr. matter, Order to Show Cause, Trustee vs. Bankrupt?

Mr. Granger: Ready for the Bankrupt.

Mr. Bartley: Ready for the Trustee.

The Referee: The Court borrowed a carbon copy of the answer from one of counsel. The answer has now found its way into the file, and I would like to return the copy to counsel.

In connection with this matter, counsel has finished the examination of Mr. Reeve.

Has the Trustee concluded his examination of Mr. Reeve? Is there any further examination?

Mr. Bartley: Not of Mr. Reeve.

Mr. Granger: Your Honor, at this time the respondents would like to move to discharge this Order to Show Cause and release the respondents, for this reason: I feel that this evidence at this

stage shows that all of the work which was done on this grain bin project was done under a written agreement between Lloyd R. Reeve, Inc., a corporation, and the Pacific Palmdale Development Company, a corporation.

In the course of the performance of that contract the Pacific Palmdale Development Company participated in several ways by being required to contribute an assignment and [2] consent for the payment of funds from the joint venture to the bankrupt, to consent to the obligation of the joint venture, funds to Hays and Wares for the bonus for obtaining the surety bond for Mr. Reeve or his corporation. He was required to give a consent to settlement by way of that claim of Hays and Wares, and it was disposed of as against the joint venture funds.

Mr. Reeve, on the stand, testified that the bankrupt at the time had told him that Mr. Granger and Mr. Bloom were organizers and interested in Pacific Palmdale Development Company, and this testimony offered by the Trustee rather clearly establishes that at the time of the adjudication in bankruptcy, the filing of this petition, the bankrupt had neither title nor possession of the asset to which the Trustee now seeks to succeed.

It is evident that the respondent corporation has more than mere color to the title of this asset, and desires that its right in connection thereto be tried in a plenary suit rather than in a summary proceedings; such plenary suit to be before whatever court has proper jurisdiction in the matter.

Mr. Bartley: May it please the Court, answering the last contention of Mr. Granger, I call the Court's attention to the fact that the answer on file of the respondents at no place raises the question of summary or plenary jurisdiction.

Secondly, that this trial has already proceeded for one [3] day, and no objection has been made to jurisdiction, and no objection was raised at the inception of this case, and therefore the summary-plenary jurisdiction has been waived, if that issue were an issue.

Even if the summary-plenary subject were an issue, I believe Mr. Granger overlooks the fact that in the schedules, as among the properties of the bankrupt—if the bankrupt owned any interest in and to this corporation, or this corporation was the alter ego of the bankrupt, the expectation of the profits under the contract of April 7, 1954, were certainly and most certainly an asset of the bankrupt, and this argument, therefore, has no merit.

As to whether or not the corporation, that is the Pacific Palmdale Development Corporation, was a corporation, the Trustee has by no means exhausted his witnesses nor his testimony, and the Trustee by no means intends to rely solely on the testimony of Mr. Reeve.

The Trustee at no point rested his case, and even if he had I don't believe that the conclusions as drawn by Mr. Granger would be the only conclusions that could be drawn by the testimony which has been plead so far.

Mr. Granger: I might state, your Honor, that

I don't feel it is necessary for this Court to reach the point of conclusion on the testimony, as long as the preliminary testimony offered by the Trustee shows that situation, which didn't appear before; that the motion on the part of the [4] respondents is timely, and the mere fact that there is a decision yet to be made on additional testimony to be introduced by the Trustee is simply another reason for submitting it to a plenary suit.

The Referee: The motion to dismiss is denied. Proceed.

Mr. Bartley: The Trustee will call Mr. Carl W. Minton, Sr.

The Referee: Will you come forward, Mr. Minton, and be sworn. [5]

CARL W. MINTON, SR.

called as a witness, being first duly sworn, testified as follows:

The Referee: Please be seated and state your full name.

The Witness: My name is Carl W. Minton, M-i-n-t-o-n.

Direct Examination

Q. (By Mr. Bartley): What is your address, Mr. Minton?

A. My business address is 408 South Spring, Los Angeles, California, Room 900.

Q. What is your occupation, Mr. Minton?

A. Attorney-at-Law; member of the law firm of Minton & Minton.

(Testimony of Carl W. Minton, Sr.)

Q. Do you represent anyone who is present in this courtroom?

A. I represent Lloyd R. Reeve as an individual. I have represented him as an individual, and also I represent Lloyd R. Reeve, Incorporated.

Q. Did you represent Mr. Reeve and Lloyd R. Reeve, Incorporated, during the year 1953.

A. Not during the year 1953.

Q. 1954? A. 1954.

Q. During all the year 1954?

I will strike that question. [6]

Did you represent Mr. Reeve in connection with the contract upon which you have heard testimony, the contract of April 7, 1954? A. I did.

The Referee: Can you tell us approximately when you commenced representing Lloyd R. Reeve and Lloyd R. Reeve, Incorporated?

The Witness: It was either the last week in March, 1954, or the first day or two of April.

Q. (By Mr. Bartley): Mr. Minton, have you consulted with your client regarding whether or not you should testify regarding matters concerning this contract of April 7, 1954?

A. I told my client I would probably be called as a witness.

Q. Do you have the permission of your client to testify regarding the matters leading up to and in connection with that contract of April 7, 1954?

A. Yes. He told me to answer any questions I was asked.

Mr. Bartley: Your Honor, for the purpose of

(Testimony of Carl W. Minton, Sr.)

clarifying this, I wish at no point to raise any possibility of unethical conduct.

The Referee: Mr. Lloyd R. Reeve, will you stand up?

You have heard your attorney, who is now on the stand, testify that you individually and as president of the Lloyd R. Reeve, Incorporated, have given your consent to his testifying in connection with the contract negotiated between [7] Lloyd R. Reeve, Incorporated, and Pacific Palmdale Development Company, in connection with any relations had between you and Mr. John Lucas Hudson, Sr. Is that correct?

Mr. Reeve: I have.

The Referee: You have given your consent and you are willing that he should testify to any conversations that you had with him in connection with this matter?

Mr. Reeve: I do.

The Referee: Very well, thank you.

Q. (By Mr. Bartley): Mr. Minton, have you met the bankrupt, John Lucas Hudson, Sr.?

A. Yes.

Q. When is the first time you met Mr. Hudson?

A. I first met Mr. Hudson between the 10th and 19th day of April, 1954. I can't tell you the exact date, but I know it was between the 10th and the 19th.

Q. Did you have any conversations with Mr. Hudson regarding Pacific Palmdale Development Company, Inc.? A. Not at that time.

(Testimony of Carl W. Minton, Sr.)

Q. At any time subsequent to that did you have any conversations with Mr. Hudson regarding Pacific Palmdale Development Company, Inc.?

A. Yes, I did.

Q. Approximately when; when and where did these conversations occur?

A. The first real discussion that I had was, oh, it [8] was the day before Lloyd R. Reeve paid to him $15,000 on account of the contract.

I can refer to my notes and tell you the exact date, that is, the pleadings in another case.

Q. Where did this occur?

A. It occurred in the office of Mr. Reeve.

Q. Where?

A. On Wilshire Boulevard in Los Angeles.

Q. What was said and done by each of you?

A. I was called to the office of Mr. Reeve. There were present Mr. Reeve, Mr. Granger and Mr. Hudson.

Mr. Reeve stated that he and Mr. Hudson had decided to advance to the two principals involved in this contract on account of profits the sum of $15,000 each.

In other words, he asked me in their presence if I thought it was all right to pay to Mr. Hudson $15,000, and then he said he would take $15,000.

We had just a general discussion on the availability of that money for distribution at that time.

Mr. Hudson expressed the opinion that it was in accordance with good business practice; it wouldn't interfere with the reserve. Mr. Reeve joined in that

(Testimony of Carl W. Minton, Sr.)

and said that he didn't think it would deplete the reserves.

Mr. Hudson asked for the check payable to him, and Mr. Reeve asked me if it was all right.

I told Mr. Reeve that I did not think so, that the [9] contract was between Lloyd R. Reeve, Incorporated, and the Pacific Palmdale Development, Incorporated, and we would have to make the check out to Pacific Palmdale, which was one of the parties to the contract.

Mr. Granger asked what I required in order to pay the money directly to Mr. Hudson.

I told him I would require for the files of Mr. Reeve a certified copy of the resolution of the Board of Directors of Pacific Palmdale Company authorizing Lloyd R. Reeve, Incorporated, to pay to Mr. Hudson $15,000.

Mr. Granger said that he would provide me with that certified copy.

He and I and Mr. Hudson left Mr. Reeve's office that day, and I met them later in the evening around 6:30 or 7 in front of Mr. Reeve's office on Wilshire Boulevard, when Mr. Hudson and Mr. Granger presented to me what purported to be a certified copy of a Special Meeting, or the minutes of a Special Meeting of the Board of Directors of Pacific Palmdale, Incorporated, together with what purported to be a certified copy of an authorization directing or granting permission for Lloyd R. Reeve, Incorporated to pay to Mr. Hudson $15,000.

(Testimony of Carl W. Minton, Sr.)

and charge it to the profits accruing to the Pacific Palmdale, Incorporated.

The document did not have a seal. Both Mr. Granger and Mr. Hudson at the time told me the corporation did not have a seal. It was signed by Mr. Granger, I think, as [10] president, and Blanche V. Hudson as secretary.

Mr. Hudson stated there were no other directors; that he owned the corporation anyway, and Mr. Granger stated that they never did have a seal for the corporation.

I told Mr. Hudson and Mr. Granger that I was not sure in my own mind whether or not the authorization was sufficient that I could pass it.

I told him I did want to make a telephone call and seek a little independent advice for my own satisfaction, which I did. I went to a service station on the corner there and made a telephone call.

I came back and Mr. Hudson thanked me and assured me that he would never object just because —or, rather, he stated that he would not object to the fact that the certified copy of the resolution did not have a corporate seal on it.

Q. Did you have any subsequent meetings with Mr. Hudson where the Pacific Palmdale Development Company, Inc., was in any way discussed?

A. Yes.

Q. When and where did these conversations occur?

A. Mr. Hudson came to my office—oh, it was in the fall of 1954.

(Testimony of Carl W. Minton, Sr.)

The Referee: I wonder if we can take just a few minutes recess. I would like the reporter to go out to the Clerk's office and see if he can locate Respondents' [11] Exhibit A. I don't find it in the exhibit file, the carbon copy of the agreement that was executed between the parties, and as I am listening to this witness I would like to have it before me.

(Short recess.)

The Referee: Will you read the pending question?

(Question read.)

The Witness: I can't tell you the exact date. I could probably look at my records there. The girl usually keeps a record of whoever comes into the office, and out—Mr. Hudson and I had a discussion. We first talked about hunting and things in general—fishing, going to the races. Then Mr. Hudson stated to me that he wondered why I didn't go into the construction business and get some government contracts. The amount of money to be made was a great deal more than being a professional man.

He stated that he was dissatisfied with the attitude of Mr. Reeve, my client, and Mr. Reeve's attitude in not distributing what Mr. Hudson denominated "available profits." He said that Mr. Reeve was holding those profits to be distributed over a period of three or four years to cut down his own personal income taxes; that if they were distributed in 1954 that he could use them as an offset on losses that he had.

(Testimony of Carl W. Minton, Sr.)

He stated in that conversation that he was the sole [12] owner of Pacific Palmdale, and that he had an agreement with his attorney to pay his attorney 12½ per cent of his profits up to $40,000; that is, that his attorney could not make more than $40,000 in any one year for representing him from his profits.

He stated had it not been for his efforts that Mr. Reeve would never have been in on the contract; that he knew the men who could get the contract in Washington, and that he had been through the same type of a contract before; that he furnished the plans and specifications, and that he thought Mr. Reeve was taking advantage of him.

He said at that time that Pacific Palmdale Development Company was organized for the purpose of engaging in a business enterprise, a home building enterprise some place on the desert, with a Mr. Bloom and a Mr. Thornburg, but that his negotiations and associations with Mr. Bloom had fallen through, and he had no association with Mr. Bloom.

He asked me if I didn't think that I was wrong in siding in with Mr. Reeve on setting up a reserve of potential profits which were in the hands of Mr. Reeve for the potential losses that might occur in the next two or three years. That was about the sum and substance of our conversation.

Q. (By Mr. Bartley): Did you have any conversations with Mr. Hudson subsequent to the one you have just testified about which related to Pacific Palmdale Development Company in any way?

(Testimony of Carl W. Minton, Sr.)

A. Yes.

Q. When did that occur?

A. Sometime in December.

Q. Of what year?

A. Of 1954. Mr. Granger, Mr. Hudson, Mr. Reeve and myself met in the office of an attorney by the name of Schaefer.

The Referee: You and Mr. Granger and Mr. Reeve and Mr. Hudson?

The Witness: Yes.

Mr. Schaefer's office, I think, is in the Subway Terminal Building.

It was a conference with the end in view of working out a settlement on the disputes between Mr. Hudson and Mr. Reeves.

Mr. Schaefer was not present, but one of the attorneys associated with him conducted the conversations and the conference.

At that time Mr. Hudson stated that the Pacific Palmdale was the party in interest, and he was working for the Pacific Palmdale. We had a good many conferences: Mr. Granger, Mr. Hudson, Mr. Reeve and myself, over the settlement of these disputes and the distribution of that money.

Q. (By Mr. Bartley): Mr. Minton, did you have any correspondence between yourself and Pacific Palmdale Development Company, Incorporated; written correspondence?

A. Yes, I have had some correspondence, very little [14] directly.

I don't know that I have ever had any corre-

(Testimony of Carl W. Minton, Sr.)

spondence directly with Pacific Palmdale.

Mr. Granger and I as attorneys have exchanged letters pertaining to a case which is now pending in the Superior Court, and I have copies, which involve some 40 pages, I would say, in the aggregate; typewritten pages, which have come into my possession which are purportedly to be signed by John L. Hudson, manager of Pacific Palmdale.

This series of letters started, oh, I would say last June, and they have continued up until last Saturday. There are 25 pages of them that are on file in that Superior Court case. In fact, 29 pages of them are filed there as exhibits.

Those letters, I might add, are addressed to either Lloyd R. Reeve, or they are addressed to Price Waterhouse Auditors. When Mr. Hudson sent a copy to Price Waterhouse he sent Mr. Reeve a copy.

Q. Mr. Minton, in connection with this contract of April 7, 1954, have you had any negotiations, any dealings with, or have you spoken to anyone connected with the parties; that is, either connected with Mr. Hudson or the Pacific Palmdale Development Company, or Mr. Reeve, other than Mr. Reeve, Mr. Granger, or Mr. Hudson?

A. On two occasions last year I sat in on conferences pertaining to this contract, in which were present—on two occasions, I think, once Gene Wilbur, whose name is mentioned [15] in the contract, and I believe on one occasion I met a Mr. Patterson, who is mentioned, I think, in the contract.

(Testimony of Carl W. Minton, Sr.)

Q. Mr. Minton, did anyone other than Mr. Hudson or Mr. Granger have any negotiations with you regarding the Pacific Palmdale Development Company respecting this contract?

A. No other person at all.

Q. Mr. Minton, when did your client, Mr. Reeve, first contact you in connection with the matters which are incorporated in the contract of April 7, 1954? A. It was either on Friday——

The Referee: May I interrupt there? The contract which has been introduced, or the agreement which has been introduced as Trustee's Exhibit 1 is a carbon copy, and, of course, appears to be undated.

Mr. Bartley: Yes.

The Referee: Is there any disagreement between counsel as to the date of the agreement?

Mr. Granger: Yes. If the Trustee would insist that it is the 7th, the contracts when signed and exchanged between the parties were not dated, and a date of April 7th or April 8th has been supplied simply by memory or impression.

Mr. Bartley: Yes, your Honor. The testimony of Mr. Reeve was that it was signed on the 7th, that is why I have referred to that date.

Mr. Granger, is there any contest but what the contract was signed in Washington. [16]

Mr. Granger. No.

Mr. Bartley. Then it would have had to have been signed between the 7th and the 9th.

(Testimony of Carl W. Minton, Sr.)

Mr. Granger: Yes. I just don't know whether it was signed on the 7th or the 8th.

Mr. Bartley: The date, whether it is the 7th or the 9th, is irrelevant, your Honor, as far as the Trustee is concerned.

The Witness: Mr. Reeve contacted me on, I would say, definitely the Friday before the 6th of April, 1954, and discussed with me that a purported contract between him and Mr. Hudson——

Q. (By Mr. Bartley): What was the conversation?

A. Mr. Reeve stated that he was contemplating entering into a contract——

Mr. Granger: Just a minute. I will object to that question on the ground it is incompetent, irrelevant and immaterial, and made outside the presence of the bankrupt or the respondent here.

The Referee: The objection is sustained.

Q. (By Mr. Bartley): Mr. Minton, in the course of drafting and preparing the contract of April, 1954, did you have any negotiations with either Mr. Hudson or Mr. Granger?

A. Yes. Mr. Granger called me on the telephone, or I called him.

Q. When was this telephone call? [17]

A. I think the first one was either Friday or Saturday before the 6th.

Q. What was said between the two of you?

A. We made an appointment for Mr. Granger to come to my office on the Monday morning before

(Testimony of Carl W. Minton, Sr.)
the 6th. I think the 6th was on a Tuesday, which he did.

Q. What was said and done at that meeting in your office on Monday morning?

A. I told Mr. Granger that Mr. Reeve had contacted me about a proposed contract between Mr. Reeve and Mr. Hudson.

Mr. Granger told me that he represented Mr. Hudson and that he had brought with him a rough outline of salient points that he wanted in the contract.

He stated that we were both attorneys; that we both knew the salient paragraphs that would go into such a contract.

I told Mr. Granger that my client thought it was a contract that could be drawn in an hour or two, when an attorney actually needed a week to draw it properly.

Mr. Granger said he would work with me on it, and we did work Monday and Tuesday.

Q. Mr. Minton, was there any discussion regarding the Pacific Palmdale Development Company and the reason why the contract was between the Pacific Palmdale Development Company as distinguished from as between Mr. Hudson and Mr. Reeve?

A. I asked Mr. Granger, because prior to this time I [18] hadn't heard the words "Pacific Palmdale" mentioned.

Mr. Granger told me that the contract was to be

(Testimony of Carl W. Minton, Sr.)

drawn between Lloyd R. Reeve and Pacific Palmdale.

I called Mr. Reeve on the telephone while Mr. Granger was in the office, and Mr. Reeve said that he guessed that is the way they wanted to do business.

Mr. Granger told me that Mr. Hudson had a corporation, and he wanted the contract run through the corporation, and I dropped it at that.

Q. Was there any discussion as to who owned the Pacific Palmdale Development Company?

A. There was no discussion as to who owned it, other than the fact that Mr. Granger told me that Mr. Hudson had a corporation and he wanted to do business that way. I didn't question any of the reasons or anything.

Q. Was there any discussion as to whom profit from this venture was to be paid?

A. At that time Mr. Granger and I spent considerable time in outlining the paragraphs in the contract on how the money was to be disbursed.

Mr. Granger expressed the point of view that without a doubt there would be many more contracts after this one was completed; that is, after the first contract that we got from the government, there would be others to follow up, and we spent considerable time in outlining Mr. Reeve's duties to furnish the labor and the materials, and that he was to [19] be reimbursed.

We both stated to each other that we understood that Mr. Reeve was to be reimbursed for his ex-

(Testimony of Carl W. Minton, Sr.)

penses first, and his outlay; that when it was feasible and the reserve would not be depleted too much the parties could mutually agree to pay each other amounts and charge to profit.

Q. Was there any discussion regarding the payment of moneys to Mr. Hudson?

A. I don't think specifically at that time. Well, yes, there was.

Mr. Granger stated to me that in all probability a contract would be assigned to Mr. Hudson, but I did not accept the paragraph that he wanted inserted, so we sat down and wrote it out two or three times, a new paragraph whereby the Pacific Palmdale Company could assign a contract to Mr. Hudson.

Q. In the testimony you have just given regarding assignment of the contract, I place before you what purports to be a copy of the contract.

On page 6 thereof I note a Paragraph 14 at the bottom of the page.

Is that the paragraph to which you have been referring?

The Referee: Counsel, the copy of the agreement you have just handed to the witness is not the same as heretofore introduced as Trustee's Exhibit 1, because Trustee's Exhibit 1 the last page is apparently page 5. [20]

Mr. Bartley: I best see the Court's copy.

The Referee: We ought to use identical documents so we can follow it.

(Testimony of Carl W. Minton, Sr.)

Trustee's Exhibit No. 1, it appears that Paragraph No. 14 is on page 5, counsel.

Mr. Bartley: Yes, your Honor.

Q. I call your attention to page 5 of Trustee's Exhibit 1, and to Paragraph 14. Is that the paragraph to which you have just referred?

A. Yes, it is.

Q. Was there any other discussion regarding that particular paragraph or payment of moneys to Mr. Hudson in the preliminary negotiations in the draffing of this contract?

A. Only in general terms.

Paragraph 12 was inserted after it had been rewritten a couple of times to the satisfaction of both Mr. Granger and myself.

Q. Mr. Minton, did you ever have any conversations with Mr. Hudson during any of the various court appearances you made in connection with the lawsuit now pending between Pacific Palmdale Development Company and Lloyd R. Reeve, Incorporated?

A. You mean with Mr. Hudson?

Q. With Mr. Hudson; yes, sir.

A. Oh, yes, many times.

Q. Have you had any conversations relating to the Pacific Palmdale Development Company and the relation of Mr. Hudson to that company?

A. Yes.

Q. When and where did these conversations occur?

A. I asked Mr. Hudson in the office of Lloyd R. Reeve either in August or September — Mr.

(Testimony of Carl W. Minton, Sr.)

Granger, Mr. Hudson, Mr. Reeve and I were present, and Mr. Reeve's secretary was in the office, and two representatives of Price Waterhouse, Auditors, were present.

I asked Mr. Hudson if the Pacific Palmdale Development Company had engaged in any business enterprises prior to the contract between Pacific Palmdale and Lloyd R. Reeve, and he said no.

I asked him if he had engaged in any business since, and he said he had more business lined up than I ever heard about by way of contracts.

Q. Did you have any other conversations with Mr. Hudson during either at court or at your offices in connection with this lawsuit?

A. Yes. Mr. Hudson told me that he thought this lawsuit should be settled two or three times, but that Mr. Reeve didn't want to settle it on his terms.

He said that Mr. Reeve wasn't going to get away with anything, and would have to pay him an equal amount of money until "I started receiving copies of these letters." Mr. Hudson always talked in the first person. Now, he said, [22] "As manager for Pacific Palmdale Company."

Mr. Bartley: No further questions, your Honor.

Cross Examination

Q. (By Mr. Granger): Mr. Minton, since your initiation of your interest in this project, your son has come into a partnership with you, has he not?

A. Yes, that is right.

Q. When did he join your firm?

(Testimony of Carl W. Minton, Sr.)

A. Well, let's put it this way: I had an office association with one John C. Miles. My son was admitted to practice in January of 1955.

He spent his spare time around our office for many months, many years. He had another month of school, so he didn't actually finish his schooling at U.S.C. until February.

He worked with Mr. Miles and myself until Mr. Miles died in May of 1955, and he and I have been together since.

Q. And he has been detailed to do some work on the Reeve-Pacific Palmdale dispute, has he not?

A. I don't know that I ever have definitely assigned him any particular job.

He has gone to court with me and he has helped me brief law. He has told me that Mr. Hudson has called him on several occasions; on one occasion, I think, an hour and a half telephonic conversation. I think he has called you [23] pertaining to continuances or something, Mr. Granger.

Q. Your memory is that you first met Mr. Hudson between the 10th and 19th days of April, 1954, for the first time?

A. That is my best recollection, Mr. Granger. It was, I know, after he and Mr. Reeve had been to Washington, and it was before Mr. Reeve accepted the contract from the government on the 19th. That is my best recollection.

Q. Where did you meet him at that time?

A. I think I met Mr. Hudson first in Mr. Reeve's office.

(Testimony of Carl W. Minton, Sr.)

Q. Your introduction to the grain bin deal was, you think, about the Friday before April 6th?

A. It was either Friday or Saturday that Mr. Reeve called me.

Q. And he told you of some negotiations that he had with Mr. Hudson with reference to the grain bin deal, and they were prepared to submit matters to the attorneys for the preparation of a contract. Is that right? A. Yes.

Q. Then I contacted you or you contacted me, and we met in your office and prepared the contract on April 6th. Isn't that true?

A. I think it was part of two days, Mr. Granger; the 5th and 6th. I think you were there on the 5th, and then I think you came back on the 6th, and you left. I hired a [24] special girl up on the next floor to draw up the contract. I stayed in the office until about 6:30——

Q. 6:30 on the evening of the 6th?

A. 6:30 on the evening of the 6th.

Q. I was there with you most of the day, was I not, on the 6th? A. Yes.

Q. At the outset we conferred over the form of the contract, and I had some memo of provisions that I wanted to go into the contract that I relayed to you, isn't that so? A. That is right.

Q. At that time I told you from the standpoint of the second party, that would be Pacific Palmdale Development Company?

A. That is right.

Q. Do I understand your testimony to be that

(Testimony of Carl W. Minton, Sr.)

you inquired as to the ownership of Pacific Palmdale Development Company at that time?

A. No. I called——

Q. There was no discussion between us as to the ownership of Pacific Palmdale, was there?

A. I called Mr. Reeve on the telephone, because I hadn't heard of Pacific Palmdale.

Q. And on that occasion he said to go ahead, that it was all right, did he not? A. Yes.

Q. You called him several times while we were working that out each day, and almost in each instance he responded favorably to your request that it should be in this form or that form. Isn't that correct? A. That is right.

Q. In connection with Paragraph 14 of Trustee's Exhibit 1, that is the paragraph, Mr. Minton, relating to the possible assignment of the contract to Mr. Hudson. A. Yes.

Q. We had some discussion concerning that paragraph and the application of it to the contract?

A. Yes.

Q. On that occasion did I state to you that Pacific Palmdale had plans for construction of homes in a subdivision at Palmdale, California?

A. No. You told me that they had had in the past.

Q. But I didn't tell you that there were current plans for Pacific Palmdale building houses at Palmdale?

A. I don't recall, Mr. Granger, of you telling me that.

(Testimony of Carl W. Minton, Sr.)

Q. Didn't I on that occasion tell you in connection with the construction of homes at Palmdale one Phil Bloom had an interest through Pacific Palmdale Development Company?

A. Mr. Granger, I think you told me after my inquiry that Phil Bloom was interested in Pacific Palmdale.

Q. Didn't I tell you in that connection with that assignment, that his interest in connection with [26] that was not defined, and he would not have an interest in the grain bin deal, and that it was necessary for me to provide for the assignment, possible assignment of this contract, in case a deal developed with Pacific Palmdale Development Company for the construction of housing at Palmdale in which Mr. Bloom did have an interest?

A. Mr. Granger, I have no recollection of those impressions at all.

Q. At all? A. No.

Q. Did I not tell you in substance that it would be necessary to revamp and reconstruct the setup, taking the grain bin deal in the name of Pacific Palmdale in that Phil Bloom would have no interest in that, but would be interested in the corporation? A. No.

Q. No suggestion of that?

A. I have no recollection of it, Mr. Granger.

Q. Did I give you any reason or state to you any reason at that time why I wanted that assignment provision in the contract?

A. You said in all probability it would later be

(Testimony of Carl W. Minton, Sr.)

assigned to Mr. Hudson, and we discussed the specific provision—I just can't remember it. I haven't read it completely for a long time, but you expressed the specific indication that even though it were assigned that Pacific Palmdale [27] would be responsible for it?

Q. In other words, Pacific Palmdale wouldn't be let off the hook, even though it were assigned, that we would still have to supply Mr. Hudson's services to carry out this program?

A. If Mr. Reeve called for them.

Q. Yes.

You left the office about 6 o'clock, I think, the night of the 6th? I left sometime in advance of that, did I not?

A. I would say 6:30, or it may have been 7 or 7:30. I know I stayed there until the contract was completed, and then a representative from Mr. Reeve's office came and got the contracts.

Q. Just a minute, I would like to develop that with questions, if you don't mind.

In the course of preparing this contract we went paragraph by paragraph, and in some measure agreed upon it, and then you handed it to your girl to write it out in finished form. Isn't that correct?

A. That is right.

Q. In other words, Mr. Minton, our negotiations and effort and preparation of that contract did not await the completion of the proposed form or the

(Testimony of Carl W. Minton, Sr.)

approved form before the stenographer started to write it?

A. If I understand what you are asking, in other words, we worked it piecemeal. Is that what you mean? [28]

Q. That is right.

A. That is correct. You dictated part of the time and I dictated part of the time. We wrote it out in longhand; part of it you wrote out in longhand and part of it I wrote out in longhand.

Q. After we agreed upon what a provision would be, that was given to the girl to write up while you and I wrestled some more with another paragraph for approval. Isn't that true?

A. I believe it was entirely written up in the rough before she started the final document. I may be wrong in that, Mr. Granger.

Q. Even before we decided upon a final approvement of any form it was in the rough. Isn't that true? A. Yes.

Q. Isn't it also true, Mr. Minton, when you and I had approved the latter portions of that contract which were not yet typewritten, I left your office before it was typewritten? A. That is right.

Q. At that time was there not the plan made by your telephone call to Mr. Reeve that you, after that was finished, would take it to the airplane that night so that he could carry it to Washington that night by airplane?

A. I told Mr. Reeve on the telephone that I live close to the airport in Inglewood, and I would

(Testimony of Carl W. Minton, Sr.)

have the contract at the airport. He said he was leaving at 10 o'clock [29] and I said I would take them to him.

Q. Did you take them there?

A. No, I did not. Mr. Reeve called me on the telephone along at the end of the business hour and asked me how I was coming along, and he said that representatives in his office were going to be late, and they would pick them up, which they did.

Q. When I left your office I didn't see you again that day before Mr. Reeve left for Washington by plane, did I?

A. No, Mr. Granger. You and I didn't meet until, I think, quite a while afterward.

Q. At the time I left had there been anything said between you and me as to how an officer or representative of Pacific Palmdale Development Company would sign that contract after it got to Washington?

A. I don't think there was a word said about it.

Q. Nothing said about that?

A. Nothing said about that.

Q. You feel that you first met Mr. Hudson after he and Mr. Reeve got back from Washington between the 10th and 19th days of April. Is that correct? A. That is right.

Q. Were you advising with Mr. Reeve at the time that he sent the final acceptance to Washington of the grain bin contract?

A. No, I had nothing to do with it, [30] Mr.

(Testimony of Carl W. Minton, Sr.)

Granger. Do you mean correspondence between Mr. Reeve and Washington, D.C. relative to it?

Q. Pertaining to Mr. Reeve's final acceptance of the government's earlier conditional acceptance of the first bid?

A. I was. I don't recall Mr. Reeve consulting with me about that, however.

Q. Isn't it true, Mr. Minton, that you didn't confer with Mr. Reeve about the grain bin deal until difficulties began to develop between him and Pacific Palmdale Development Company and Mr. Hudson?

A. No, because I specifically remember Mr. Reeve telling me that he was waiting to hear from Washington on whether or not he was going to get the contract.

Q. Did he say with reference to what?

A. Whether or not he was going to get the contract from the Commodity Credit Corporation.

Q. Mr. Minton, you have had occasion to review the records and files of the project several times, haven't you?

A. On many of them, but I haven't read them all, but many of them.

Q. In connection with that haven't you determined the chronology of how the deal was submitted originally to the Commodity Credit Corporation? A. On April 19, 1954.

Q. Didn't Mr. Reeve receive then what we have termed a conditional acceptance, and what [31]

(Testimony of Carl W. Minton, Sr.)

this communication from Washington termed "a conditional acceptance of bid"?

A. On April 19, 1954.

Q. That is right.

Did not Mr. Reeve thereafter accept conditional acceptance of the government bid by a final telegram on or about April 19th or 20th?

A. April 19, 1954.

Q. After Mr. Reeve's acceptance of the contract on April 19, 1954, when did you again talk with Mr. Reeve about the grain bin deal?

I will withdraw that.

Did you talk with Mr. Reeve about his difficulty in getting a bond prior to May 3, 1954?

A. I don't believe that I did. I don't recall discussing with Mr. Reeve the getting of a bond prior to his getting the bond.

Q. Did you discuss with him his difficulty in getting the bond?

A. I don't recall discussing with Mr. Reeve anything about his getting a bond before he got the bond, except that he did inform me that the bond that he had to put up with the government approximated a half million dollars, but I had no part in either applying for his bond or getting the bond, and other than the mere knowledge that he had to put the bond up at that time, I knew nothing about it, Mr. Granger.

The Referee: The bid was submitted to the [32] Commodity Credit Corporation April 9th or 19th?

Mr. Granger: April 9, 1954.

(Testimony of Carl W. Minton, Sr.)

The Referee: And the conditional acceptance was received when?

Mr. Granger: April 17th by the Commodity Credit Corp.

Mr. Reeve gave an acceptance of that on the 19th of April.

Q. Now, Mr. Minton, can you remember any conversation you had with Mr. Reeve about the grain bin deal before this trouble that developed?

A. Yes.

Q. What was that; when was that?

A. Mr. Reeve discussed with me the procurement of materials, that is, lumber.

Q. When was that conversation, Mr. Minton?

A. He referred to metal lugs.

Q. Was there a legal problem posed in connection with this procurement of that material at that time?

A. I think he called me one time about whether or not it was feasible to ask a lumberman to put up a bond, if I remember right.

I think we discussed in general Social Security taxes and labor taxes, and we did discuss the provision of your joint control, but I think the other matters were just general, but we did discuss this joint control.

Q. At that time there was a dispute over [33] the question of joint control, was there not?

A. No. We discussed it before a dispute arose: before any dispute arose.

Q. And you determined that Pacific Palmdale

(Testimony of Carl W. Minton, Sr.)

Development Company should not participate in the joint control as provided in the contract?

A. Not at first, Mr. Granger.

Mr. Reeve asked me how I thought it should be set up as to joint control. Mr. Reeve had every intention in the world of giving you gentlemen joint control of all of those funds.

Mr. Granger: I move to strike the answer of the witness as not responsive.

The Referee: The motion to strike is granted.

The Witness: The first conversation was with Mr. Reeve on how it should be set up; how the account should be carried. That was even before he even got his money, his first check from the government.

Mr. Granger: Move to strike that as not responsive.

The Referee: The motion to strike is granted.

Q. (By Mr. Granger): At the time that you and I met on April 6th to prepare this contract you knew that Mr. Hudson had made an assignment for the benefit of creditors, did you not?

A. I did not.

Q. That was never discussed with you? [34]

A. It was never discussed. I never heard of the man in my life before, and never talked with him; never heard of it at all.

Q. Had Mr. Reeve told you at that time that there had been an earlier discussion with Mr. Hudson in which Mr. Hudson had stated that he had

(Testimony of Carl W. Minton, Sr.)
made an assignment for the benefit of creditors and had failed in business?

A. Mr. Reeve never spoke to me about it at all. I learned——

The Referee: Just answer the question and don't volunteer quite so much. We will make more headway that way.

Q. (By Mr. Granger): Mr. Minton, is it your memory that was in the fall of 1954 that the $15,000 payment to Mr. Hudson was made?

A. I have the dates in my file there, but I would say it would be in the summer.

I have dictated the dates a dozen times, but I just don't recall them.

Q. At that time there had been considerable deliberation given by you and Mr. Reeve to the determination of your probable profits under this contract at that time, had there not?

A. I don't recall discussing profits; that is, figures, if that is what you mean, with Mr. Reeve at any time that you were not present.

Q. I didn't ask that, Mr. Minton. I asked [35] if there ever had been a discussion as to the profit of the enterprise at the time the $15,000 was paid to Mr. Hudson.

A. Between Mr. Reeve and myself?

Q. Yes. A. No. I don't recall of any.

Q. Did you advise with Mr. Reeve on the payment of $15,000? A. Well, yes.

Q. Is that your memory? A. Yes, I did.

Q. Did you approve the payment to Mr. Hud-

(Testimony of Carl W. Minton, Sr.)

son of the $15,000 as a business proposition, an economic proposition?

A. I told Mr. Reeve that the policy of whether or not it was good business to distribute the $15,000 was not within my province; that it was up to him and to Mr. Hudson.

The legality, that is, the procedure of handing the money over, was in my province as a lawyer.

Q. So far as you remember, there was no discussion between you and Mr. Reeve and anyone else on or about that time as to substantially the effect that the profits of the business would be approximately $125,000 - $130,000?

A. I don't recall of any figures being stated.

Mr. Reeve told me that he and Mr. Hudson had agreed to a division of the profit now; $15,000, and he wanted to know—he said that Mr. Hudson had wanted $40,000, but he would not give him $40,000 at that time, and he wanted [36] $15,000, and that Mr. Hudson came to his office and wanted the check for $15,000. In fact, I think he was in Mr. Reeve's office at the time, and I told Mr. Reeve that, "If you are going to pay this money it has to go through Pacific Palmdale."

The Referee: We will take a five-minute recess at this time.

(Recess.)

Q. (By Mr. Granger): Mr. Minton, at the time the $15,000 was paid to Mr. Hudson there had been considerable dispute, had there not, between the

(Testimony of Carl W. Minton, Sr.)

parties over the question of joint control and possible division of profit?

A. There had been a dispute that had arisen between Mr. Reeve and Mr. Hudson on joint control of the funds. Mr. Hudson demanded joint control of the funds.

Q. Just a minute. Where did he make that demand? Just in what form did he make that demand, and when, if you know?

A. In Mr. Reeve's office. You were present, Mr. Reeve and myself and Mr. Hudson, and we had several discussions over joint control.

On one occasion Mr. Reeve told you that if you would act as the co-signer he would have no objection, but he would not have Mr. Hudson, because Mr. Hudson had taken, according to Mr. Reeve, an antagonistic and belligerent attitude on different phases of the consummation of the contract, [37] and he told you if you would act, but not Mr. Hudson.

Q. A joint control arrangement was never worked out, was it?

A. A joint control arrangement was never worked out.

Q. Do you remember a conference in your office where Mr. Reeve was there, you were there and and Mr. Hudson was there, and I was there, about the time of the filing of the Superior Court action in July of 1954, in which I made the threat of a receivership for the project?

Mr. Bartley: I am going to object to this line

(Testimony of Carl W. Minton, Sr.)

of questioning as irrelevant. The joint control division has not in any way been examined into by the Trustee. This is cross examination. I fail to see how this examination in any way relates to the direct examination.

Mr. Granger: I am simply identifying a conversation here by this question.

The Referee: The Court would probably sustain your objection to the matter of joint control, but the present question asks if he remembers a conversation at a certain time and place, and for that reason your present objection will be overruled.

I am going to have the question read to you, and probably if you answer the question more directly we will make more time, because each time you say yes or no you keep on going and you volunteer with a long dissertation, which is not helping us in making any progress in this matter. [38]

Please read the question.

The Court wishes to give counsel all the latitude that it possibly can, because the Court realizes that sometimes the administration of justice is not a speed race, but on the other hand the witnesses should listen to the questions and respond to the questions more directly.

Now read the question.

(Question read.)

The Witness: Yes, I remember that.

Q. (By Mr. Granger): At that time had you

(Testimony of Carl W. Minton, Sr.)

determined what the approximate profit, gross profit of the venture was at that time?

A. No, I had not.

Q. At that time did you know that Mr. Hudson had previously made an assignment for the benefit of creditors and had even filed a petition in bankruptcy?

A. I knew nothing about his assignment for the benefit of creditors at that time.

Q. What about the bankruptcy?

A. I knew nothing of the details of the bankruptcy.

Mr. Hudson had stated to me upon my direct question: "Have you been through bankruptcy?", he said, "I have," and that is my entire knowledge of his bankruptcy at that time.

Q. When was that?

A. It was before the payment of that $15,000.

Q. Do you recall if that was paid in June of 1954? [39]

A. I think it was later than June. I can't tell you, Mr. Granger, the exact date. Probably it was in July.

Q. Mr. Minton, the meeting which we have just identified as being the meeting in which I threatened a receivership in the State Court proceedings, did you make a statement in substance to this effect: That if adjustment of the difficulties between the parties were not effected that this might end up in the Bankruptcy Court?

(Testimony of Carl W. Minton, Sr.)

Mr. Bartley: Object to that question as irrelevant.

The Referee: The objection is overruled. It goes to the possible bias and prejudice of the witness' testimony.

The Witness: Mr. Granger, I did not on that occasion make that statement to you, and I never have at any time previous or subsequent made such a statement to you.

Q. (By Mr. Granger): Did you at any time make a statement to me substantially to this effect: That if a settlement was not made that the matter would reach the Bankruptcy Court, or you would take it up with the Trustee in Bankruptcy?

A. Mr. Granger, I did not either on that occasion or at any time previous or at any time subsequent.

Q. Mr. Minton, in what capacity do you appear in this court today?

A. As a witness, of course, being on the witness stand.

Q. Do you have an additional interest in this matter?

A. As attorney for Lloyd R. Reeve, Incorporated, who [40] is a defendant in litigation now in the Superior Court—I don't have the case number right here—in which Pacific Palmdale, Incorporated has sued Lloyd R. Reeve and Lloyd R. Reeve, Incorporated for an accounting. Any bit of information pertaining to matters and facts that are involved in this contract I am interested in, whether

(Testimony of Carl W. Minton, Sr.)

here or elsewhere, and I am here as an observer, more properly.

Q. Last Monday throughout the afternoon you sat at counsel table with Mr. Bartley, did you not?

A. Yes.

Q. And you conferred and consulted with him throughout the period of the examination of Mr. Reeve, did you not?

A. He asked me for what information I had, and I gave it to him.

Q. Did you volunteer anything to him at that time? A. I may have. I don't know.

Q. Did you feel——

A. May I finish my answer?

Q. Yes.

A. I wrote out a little statement of chronological events which he did not ask me for, which I have in my brief case.

Q. And you appeared in this courtroom only as an observer?

A. I am vitally interested in this.

The Referee: He is not one of the attorneys [41] of record for the Trustee, and whether he has collaborated with the Trustee, he still only appears in this court, as far as this Court is concerned, as a witness.

Mr. Granger: That is true. I am simply trying to determine what interest he has as a witness.

Q. Mr. Minton, is it true after the hearing last Wednesday you made a contact with Mr. Phil

(Testimony of Carl W. Minton, Sr.)

Bloom and had a talk with him about his interest in Pacific Palmdale Development Company?

A. No, I called him before.

Q. How long before?

A. I called him during the noon hour before I was in court here Friday afternoon.

Q. Now, a meeting was held on Wednesday, was it not? A. Wednesday, whenever it was.

Q. And you called him during the noon hour?

A. If I recall, I called his office about 11:30, and had been informed that he would be out. I called again after 12.

Q. The purpose of your inquiry was to determine whether he had any interest in Pacific Palmdale, was it not? A. Yes.

Q. The question of whether Pacific Palmdale Development Company, a corporation, is an alter ego of John Lucas Hudson, Sr. is not an issue in the State Court case, is it?

A. I am an attorney, and I don't care to [42] leave any stone unturned—I would say yes, it is very important from my point of view as an attorney. I want all of the facts that I can get, to know how to properly defend my case.

Q. Isn't it a fact, Mr. Minton, that you have introduced the issue in that case, through the medium of an answer, or, rather, a cross-complaint to which a demurrer was sustained, and as to which you never amended?

Mr. Bartley: Object to that as being completely irrelevant.

(Testimony of Carl W. Minton, Sr.)

The Referee: Do you wish to be heard on the objection?

Mr. Granger: Only if it isn't an issue in the case why is he calling Mr. Bloom unless it is for an advantage that he can get for his client in this case.

The Referee: The objection is sustained.

Mr. Granger: It shows his bias as a witness.

The Referee: The Court has permitted you to go quite a long way in that regard, and I think from now on we are overemphasizing that.

Mr. Bartley: I cannot testify, but I can state for the purpose of clarification of this line of questioning, that any telephone calls that have been made by Mr. Minton have been made at my special request.

Mr. Granger: I will object to counsel's statement. He has no way of knowing what telephone calls were made.

Mr. Bartley: I was engaged in a long hearing at the time this hearing started, and I requested Mr. Minton to call [43] Mr. Bloom. I asked him on three occasions to call Mr. Bloom.

The Referee: The Court has indicated it would allow considerable latitude to show bias and prejudice of a witness. However, this examination has been extended, it seems, needlessly long on that point.

The ruling that the objection is sustained will stand.

Q. (By Mr. Granger): Mr. Minton, you stated,

(Testimony of Carl W. Minton, Sr.)

I believe, that I said something that Pacific Palmdale Development Company never had a seal?

A. You stated that to me, Mr. Granger, at least that was my recollection.

Q. Have you ever seen the seal of Pacific Palmdale Development Company in connection with its affairs with Mr. Reeve?

A. I believe that I have in my possession a couple of documents, subsequent documents that you placed a seal on.

Q. Are you positive of the date of the conversation in which I said the corporation did not have a seal?

A. I can ascertain it.

Q. I want your memory on it now.

A. It was when you delivered to me—let me see—the certified copy of the authorization for Lloyd R. Reeve, Incorporated to pay to Mr. Hudson $15,000. I raised the question.

I said to you, "Mr. Granger, this document has no corporate seal on it."

You told me that you never had a seal; that you didn't have a seal, but it was perfectly legal.

I told you that I wanted to get some independent advice, and I wanted to go and make a telephone call.

We were standing right on the corner across from Mr. Reeve's office, you and Mr. Hudson and myself, and I went into the service station and called my brother to get his advice, for whatever it was

(Testimony of Carl W. Minton, Sr.)

worth to me at that time. He happens to be an attorney also.

Q. You identify that conversation as having been about June 3rd. Is that correct? I am referring to the one where the $15,000 was paid.

A. No. I identify it as the day that you brought me that certified copy, which I think was the day before you got the check for $15,000. It was the night before, it was late in the evening. It was about 6:30 in the evening, because you had gone to Beverly Hills or Santa Monica to draft the papers.

I refused to pass the original papers that you brought in to pay Mr. Hudson $15,000.

Q. There were submitted to you what purported to be a copy of the resolution of the Board of Directors of Pacific Palmdale and its assignment to Mr. Hudson of the $15,000 and the consent to your payment. Is that true? A. Yes.

Q. After they were given to you or Mr. Reeve the [45] payment was made to Mr. Hudson. Isn't that true?

A. The papers were handed to me by yourself.

Q. And that was virtually the same procedure later in the year in connection with a $5,000 payment. Is that not true?

A. Approximately, yes.

Q. The $5,000 payment followed the conference in Mr. Schaefer's office that you have mentioned, did it not? A. Yes.

(Testimony of Carl W. Minton, Sr.)

Q. At that time Mr. Reeve had taken a vacation to go to Hawaii?

A. No, he went subsequent to that. Mr. Reeve was present at that conference.

Q. But the payment of the $5,000 was made, was it not, while Mr. Reeve was in Hawaii?

A. Yes.

Q. And you, as a preliminary to that payment, had been presented with documents as to the resolution, assignment and consent, which were similar to those approved at the time the $15,000 was paid. Is that true?

A. Yes. There is a certified copy of the resolution signed by yourself as president and Blanche Hudson as secretary.

Q. When would you say that Mr. Hudson first told you that he was owner of Pacific Palmdale Development Company? That he was the sole owner of Pacific Palmdale Development [46] Company I believe was your testimony.

A. It was sometime in the summer of 1954 or the early fall when he came to my office.

Q. And he told you that he had a deal with me by which I was to receive 12½ per cent until I had $40,000 in any year. Is that right?

A. That is right.

Q. In connection——

A. In fact, if you want me to tell you, he said something in addition to that.

Q. In connection with this conversation in which he said that he was going to pay me 12½ per cent,

(Testimony of Carl W. Minton, Sr.)

do I understand your testimony to be that he then told you that the deal with Phil Bloom had fallen through?

A. He said it fell through before the grain bin deal started.

Mr. Bartley: May it please the Court, in order to shorten the cross examination of counsel for the respondent, if he wishes the testimony repeated that has heretofore been given, I suggest that we have the reporter read it instead of going question by question through the evidence and repeating everything that has been testified.

The Referee: That is his right under cross examination. He has a right to interrogate the witness as to anything upon which you conducted a direct examination.

Mr. Bartley: Yes, but I thought we might shorten the [47] proceedings.

Q. (By Mr. Granger): Then I believe your statement is to the effect that some time later Mr. Hudson reversed himself, and in Mr. Schaefer's office stated that he is working for Pacific Palmdale Development Company?

A. Yes, I think in Mr. Schaefer's office he said he was working for Pacific Palmdale. That was in December.

Q. When was it that Mr. Hudson told you that there would be more contracts after this grain bin contract? Just what did he say? I didn't quite understand your testimony.

(Testimony of Carl W. Minton, Sr.)

What contracts did that purport to relate to, Mr. Minton? A. Mr. Hudson told me——

The Referee: The question is: When and what did he say. It is a complex question, but let's get when first.

The Witness: At the time he was in the office there in the summer, when he came to see me at the office.

Q. (By Mr. Granger): Did he identify the contracts that would thereafter follow, or describe their general nature? A. Yes.

Q. What did he say in that respect?

A. He said the potential for building projects from the Commodity Credit Corporation was unlimited, and there was a possibility of making a million dollars in one year in profits.

He said, "You should be in that kind of a business [48] instead of practicing law as a professional man."

Q. In this conversation in Mr. Reeve's office before agents of Price Waterhouse, how long ago was that held?

A. I would say sometime in August. It was after the last court hearing before Department 26 that we had.

Q. That would be later in the year, or in the middle of the year? A. That is right.

Mr. Granger: I think that is all of this witness.

Mr. Bartley: I have no further questions.

The Referee: You may step down. [49]

Mr. Bartley: The Trustee will call Mr. Hudson

under Section 21(j) of the Bankruptcy Act as an adverse agent.

JOHN LUCAS HUDSON, SR.

called as a witness, being first duly sworn, testified as follows:

The Referee: Please be seated and state your full name.

The Witness: John L. Hudson.

Direct Examination

Q. (By Mr. Bartley): What is your address, Mr. Hudson?

A. 865 - 26th Street, Santa Monica.

Q. Do you have a telephone? A. Yes.

Q. What is the telephone number, Mr. Hudson?

A. Exbrook 31327.

Q. Mr. Hudson, do you know who the original incorporators of the Pacific Palmdale Development Company, Incorporated were? A. Yes.

Q. Who were they?

A. They were Mr. Granger, Mrs. Hudson, Mr. Philip Bloom and William Hudson, but it was a contingency whether or not he would come down or could come down and take part.

Q. Mr. Hudson, do you recall the date that the Articles of Incorporation were filed? [50]

A. No.

Q. Do you remember the approximate date?

A. No.

Q. Do you remember whether or not those Arti-

(Testimony of John Lucas Hudson, Sr.)

cles of Incorporation were filed close to the date that you went to Washington to negotiate the contract of which we have been talking? A. No.

Q. Do you have any recollection about the filing of the Articles of Incorporation? A. No.

Q. When and where were the first discussions regarding the formation of the corporation? Strike that.

Did you participate in the discussions which led to the incorporation of this corporation?

A. No.

Q. Did you discuss the incorporation of the corporation with your wife?

Mr. Granger: I would like to have counsel identify possible conversations by reference to time.

Mr. Bartley: I will once I find out whether or not it was discussed.

The Witness: Now, the question you are asking me is what? Is it did I discuss the formation of the corporation, that is, of Pacific Palmdale Development Company, Inc. with my wife? [51]

Q. (By Mr. Bartley): That is correct.

A. Did I discuss the matter with her?

Q. Prior to the incorporation?

A. Did I discuss that with my wife prior to the time it was incorporated?

Q. That is correct. A. I did not.

Q. Did you discuss the incorporation with Mr. Philip Bloom prior to the time that it was incorporated? A. I did not, no.

Q. Did you discuss it with your attorney?

(Testimony of John Lucas Hudson, Sr.)

A. Yes, sir, I did.

Q. When did you discuss it with your attorney?

A. I discussed it with Mr. Granger, about, I would say, in July or August of 1953. I discussed an arrangement whereby Mr. Granger would set up a corporate structure for the purpose of exploiting my experience and background and talent in the construction business, but the name Pacific Palmdale Development Company, Incorporated was not even conceived of at that time, that is why I was able to say no to so many of your questions.

Mr. Granger: Don't explain your answer unless he wants you to.

The Witness: I just don't know about it.

Q. (By Mr. Bartley): Prior to the incorporation of this corporation did you have any other discussions with Mr. [52] Granger regarding the incorporation? A. No.

Q. Did you have any discussions with your wife or with Mr. Bloom concerning the organization of a corporation? A. As such, no.

Q. Such as you stated you had discussed with Mr. Granger. A. That is right.

Q. Prior to the incorporation of this corporation did you have any business dealings with Mr. Philip Bloom? A. No.

Q. Had you met Mr. Bloom prior to the incorporation of this corporation? A. Yes.

Q. When did you meet him?

A. Well, I think it was about 1941. He was in high school.

(Testimony of John Lucas Hudson, Sr.)

Q. Did you meet him anytime during 1952 or '53? A. Yes.

Q. Did you discuss business? A. No.

Q. Did you at any time during your conversation with Mr. Granger in July or August, 1953, concerning the organization of a corporation, suggest that Mr. Bloom should be one of the incorporators?

A. No. [53]

Q. Did you suggest to your wife that Mr. Bloom should be one of the incorporators? A. No.

Q. Did you have any connection with the suggestion of any of the persons who were the original incorporators of this corporation?

A. No, I did not.

Would you read that question again, please?

Q. Would you read it back and see if it is clear, Mr. Reporter; if not, I will reword the question.

(Question read.)

The Witness: I would like to have you tear that question down so I can understand what you mean.

The Referee: If you want to explain your answer, you may proceed, but you may not argue with counsel or talk about tearing down a question. You are ably represented by counsel and he will do any objecting that is necessary. However, you may explain your answer.

The Witness: I understand, your Honor.

I understand the question to mean did I suggest to Mr. Philip Bloom that he take an interest in this corporation. Is that what you mean?

Q. (By Mr. Bartley): That is not the question.

(Testimony of John Lucas Hudson, Sr.)

The question is whether or not you had any connection whatever with the suggestion of these three people, apparently who were the incorporators; your wife, Mr. Granger and Philip [54] Bloom?

A. No, I did not.

The Referee: Does the Court understand you, Mr. Hudson, to mean that you did not in any manner participate in the discussions leading up to the incorporation of Pacific Palmdale Development Company?

The Witness: No, your Honor. I understand counsel's question to mean did I have anything to do with Mr. Granger setting the corporation up between Mrs. Hudson and Mr. Bloom and himself.

Q. (By Mr. Bartley): I will ask then the broader question. Did you have anything to do with the incorporation of this corporation?

A. No, I didn't.

The Referee: Then the Court wants to ask you did you have any discussions with Mr. Bloom, Mr. Granger or Mrs. Hudson preceding the incorporation of Pacific Palmdale Development Company?

Mr. Granger: If the Court please, I would like to have the Court's question expanded to include a particular subject.

The Referee: You may object to any question that the Court propounds, and you may interrogate, either of you, with respect to any question the Court puts to the witness, but the witness is directed to answer the question of the Court. [55]

Will you please read the question, Mr. Reporter.

(Testimony of John Lucas Hudson, Sr.)

(Question read.)

The Referee: With relation to the incorporation.

The question is did you or didn't you, and you may answer yes or no and then explain.

The Witness: No.

The Referee: Very well.

The Witness: The explanation is, your Honor, I discussed the forming of some corporation, but the name Pacific Palmdale had not been decided upon up to that time.

The Referee: Did you discuss with the parties who have been named the formation of a corporation which afterwards became known as Pacific Palmdale Development Company?

The Witness: Yes.

The Referee: Did you suggest the use as incorporators of that corporation Mrs. Hudson, Mr. Bloom and Mr. Granger?

The Witness: No, your Honor, I did not.

The Referee: Do you know how those names were selected as the incorporators of that corporation?

The Witness: Yes. Mr. Granger suggested Mrs. Hudson and my son William Hudson and himself, and Mrs. Hudson suggested to Mr. Granger Phil Bloom.

The Referee: Proceed with the examination.

Q. (By Mr. Bartley): Now, prior to your trip to Washington, D. C. of about April 8, 1954, did you have any meetings with any or all of the peo-

(Testimony of John Lucas Hudson, Sr.)

ple that we have named: your wife, [56] Mr. Bloom, Mr. Granger, regarding the contract which was signed in Washington, D. C.?

A. Yes. I live with my wife. You are talking about prior to the departure?

Q. Prior to your departure for Washington, D. C. did you have any meetings with these people regarding this contract?

A. Yes, I talked with Mr. Granger about it.

Q. When did you talk with Mr. Granger about it?

A. I left on the 5th, the night of the 5th; Monday night. I don't know, but I think I must have discussed it with Mr. Granger on Sunday, maybe, before I left.

Q. Did you discuss it with either Mrs. Hudson or with Mr. Bloom?

A. I didn't discuss it with Mr. Bloom, but I discussed it with Mrs. Hudson.

Q. When did you discuss it with Mrs. Hudson?

Well, I must have discussed it with her the night before I left.

Q. What was that discussion? What was said by each of you?

A. Well, we discussed at length whether or not the risk was worth Mrs. Hudson spending her savings to take such a risk on such an uncertainty as going to the expense of going back to Washington and being able to even get a contract, mostly.

Q. Did you discuss the terms of this proposed contract? A. No.

(Testimony of John Lucas Hudson, Sr.)

Q. In the discussions you have stated you had with relation to the organization of a corporation which subsequently became known as Pacific Palmdale Development Company——

A. You made that plural. You said "in the discussions."

Q. You have stated, I believe, that you had discussions with these people: your wife and Mr. Granger, and you have stated you had no discussions with Mr. Bloom. A. That is correct.

Q. In these discussions was there any conversation relating to your particular connection or your particular relationship to the corporation as concerns this contract that was signed in Washington?

A. Well, Mr. Bartley, Mr. Granger had told me that I should not commit my services to anyone until I either had a release from my creditors to whom I had made an assignment of all assets, or was adjudicated a bankrupt, so I simply would commit positively to Mr. Granger that whatever corporation he formed that I would make a profit-sharing agreement for my services until either I had a release from the creditors or I was adjudicated a bankrupt.

Q. Yes, but did you discuss what your connection was to be with the corporation? Were you to be paid a stipulated [58] salary?

A. No. I did discuss that with Mr. Granger, and the arrangement was left more or less open as to amounts, because everything was such an uncertainty. It was just a prospect, and everything

(Testimony of John Lucas Hudson, Sr.)

was dependent upon whether or not there would even be any business, but it was just more or less understood that I would have a profit-sharing agreement with Pacific Palmdale, or the corporation that turned out to be Pacific Palmdale Development Company, and that was it.

Q. What was the profit-sharing arrangement to be between you and the Pacific Palmdale Development Company?

A. I stated to you in my last statement that we didn't set during that discussion what the agreement would be. It would be better than working for wages or salary.

Q. Subsequently did you determine or work out any profit-sharing arrangement with Pacific Palmdale Development Company? A. Yes, I did.

Q. What was that arrangement?

A. That arrangement was that the first $50,000 from an anticipated profit of between $240,000 and a quarter of a million dollars, that is what we expected to make, that the first $50,000 would go to me personally; that the next $50,000 would go to the corporation; that over-all $100,000 would be divided, split equally between the corporation and me. [59]

Q. Was this prospective corporation to have any assets, to your knowledge, for expenses and so forth?

A. No, I don't know. I can't answer that question.

(Testimony of John Lucas Hudson, Sr.)

Mr. Granger organized the corporation. The whole idea was Mr. Granger's.

The Referee: Gentlemen, it is 10 minutes after 12. Is this a good time to take a recess, or does counsel desire to develop certain questions at this time?

Mr. Bartley: I can continue just as well this afternoon.

The Referee: All right, we shall continue this matter until 2 o'clock.

All witnesses are ordered to return at that time.

(Whereupon a recess was taken until 2 o'clock P.M).

Monday, September 19, 1955 — 2:00 P.M.

The Referee: Let's continue with the matter of John Lucas Hudson, Sr.

Will it be of any help to you, counsel, if we have the last question and answer read back?

Mr. Bartley: No, your Honor, I am familiar with it.

JOHN LUCAS HUDSON, SR.,

recalled, testified further as follows:

Direct Examination (Resumed)

Q. (By Mr. Bartley): Mr. Hudson, this morning you testified you ultimately had an agreement with Pacific Palmdale Development Company for profit sharing. When was that agreement made?

A. May 3rd it was signed.

Mr. Granger: What year?

(Testimony of John Lucas Hudson, Sr.)

The Witness: May 3, 1954.

Q. (By Mr. Bartley): Mr. Hudson, you are extremely vague about what arrangements you had before you went to Washington.

To the best of your ability, can you tell us if you had any conversations with either your wife, Mr. Bloom or Mr. Granger regarding your form of compensation for services of going to Washington in connection with these contracts?

The Referee: Before the witness answers the question, what was the date of that profit-sharing agreement with the corporation? [61]

Mr. Granger: May 3, 1954, was his testimony.

Mr. Bartley: I will strike the last question and re-ask it.

Q. Mr. Hudson, you heretofore testified that you had a vague understanding that you were going to have a profit-sharing between you and Pacific Palmdale Development Company before you went to Washington.

To the best of your knowledge, what was the precise conversation between you and Mr. Granger before you went to Washington regarding this problem of profit sharing, and how you would be compensated for your services?

A. Well, I don't remember for sure whether it was Sunday. I think I did talk with Mr. Grainger on Sunday. I left Monday night on the 5th, and I didn't even know what Mr. Granger had in mind—

The Referee: Counsel is calling for the conversation you had with Mr. Granger, not what you

(Testimony of John Lucas Hudson, Sr.)

knew Mr. Granger had in mind. Just give the conversation as near as you can.

The Witness: I am trying to remember even having a conversation. You mean immediately preceding the time I left for Washington?

Q. (By Mr. Bartley): At any time before you went to Washington as regards this grain-elevator deal, as regards the contract with Mr. Reeve or Reeve, Incorporated, what was the conversation you had and approximately when was it? What was said and done between the two of you as [62] regards your compensation?

A. Well, I would say approximately that it would be between about the 3rd or 4th and the 5th, and the conversation was that Mr. Granger had then decided on a name, and had written to see if the name would clear, but he didn't know for sure at that time whether the name of Pacific Palmdale would be a party to the agreement, or what he was going to do.

Q. Mr. Hudson, leaving the name of the organization or the corporation, or whatever it was, out of it, what was your agreement as to compensation for going to Washington?

A. There wasn't any agreement established as to compensation before going to Washington; it wasn't decided.

Q. Did you have any discussion about it, whether you were going to be paid at all, or how you were going to be paid?

A. Yes, there was a discussion.

(Testimony of John Lucas Hudson, Sr.)

Q. Between you and whom?

A. Between Mr. Granger and me.

Q. What was that discussion?

A. That discussion was that if anything came of it, if there was indeed a deal that would come out of it, that I would have an agreement. He would give me an agreement for my services that would be far better than I would *have I* worked for just salary for someone else. I expected that.

It would depend on, Mr. Granger told me, [63] the potential profit that we might expect out of what kind of a deal we might expect to get, if any.

Q. Mr. Hudson, before you went to Washington isn't it a fact that you sat down with Mr. Granger and discussed the terms and the contents of this contract which was signed in Washington?

A. It is not a fact; I did not.

Q. Did you discuss the terms at all, or any of the terms, of the agreement? A. I did not.

Q. For whom did Mr. Granger draw this contract?

A. I presume Mr. Granger drew the contract for himself, for Pacific Palmdale, the corporation.

Q. Now, Mr. Hudson, didn't you sit down with anyone, either your wife or Mr. Granger, and discuss whether or not you would work for a corporation or for an individual, or whether you were negotiating these contracts——

A. No, I didn't discuss who I would work for. I only discussed that I would have a deal for my

(Testimony of John Lucas Hudson, Sr.)

services with a corporate structure of some kind, if indeed there would be a deal. There wasn't any detailed discussion as to terms or conditions or anything else about the agreement or in connection with an agreement. It was agreed if we got a deal that I would get a good deal out of it for myself.

Q. Mr. Hudson, is your wife in any way connected with the procurement of government [64] contracts?

A. Oh, yes, my wife knows about how to procure government contracts, certainly. She has helped me lots of times.

The Referee: What is your wife's business or occupation?

The Witness: She is a housewife.

The Referee: Do you have any children?

The Witness: Yes, sir.

The Referee: How many children do you have?

The Witness: Five.

The Referee: Has she ever been in business for herself?

The Witness: No.

The Referee: Has she ever been trained in any commercial pursuit?

The Witness: No.

The Referee: Has she ever actually entered into any contract with anyone else?

The Witness: No. Do you mean independent of me?

The Referee: Yes.

The Witness: No.

(Testimony of John Lucas Hudson, Sr.)

The Referee: How long have you and your wife been married?

The Witness: About 27 years, approximately.

The Referee: All right, proceed.

Q. (By Mr. Bartey): Mr. Hudson, has your wife ever had any inheritance of any size since your marriage? [65] A. No.

Q. Has she ever owned any property other than property which came as a result of your earnings?

Mr. Granger: I will object to the question as being immaterial.

The Referee: The objection is overruled.

The Witness: No.

The Referee: In other words, everything that has been accumulated by your wife and yourself has been the result of either your earnings or your wife's earnings during your marriage?

The Witness: Yes, sir.

The Referee: How long has Mr. Granger been your attorney?

The Witness: He represented me and my wife in an agreement——

The Referee: In other words, how long, put it this way, how long prior to April 1, 1954, had Mr. Granger represented you and your wife or either of you?

The Witness: It was July of 1953, that he drew up an agreement.

The Referee: What was that agreement that he drew up for you?

The Witness: It was an agreement whereby my

(Testimony of John Lucas Hudson, Sr.)

wife could engage in business and have her interests separate from mine. [66]

The Referee: Proceed, counsel.

Q. (By Mr. Bartley): Mr. Hudson, do you know whether or not——

The Referee: Let the Court interrupt you again for a moment.

There has been reference here to an assignment for the benefit of creditors.

Mr. Bartley: I am going to get at that.

The Referee: If so, I would like to know the date when that was entered into, gentlemen.

Mr. Bartley: I will proceed into that first, and then go back to what I had in mind.

Q. Mr. Hudson, there has been a reference to an assignment for the benefit of creditors which you made during this period which we have been discussing. What was the date of that assignment for the benefit of creditors?

A. I don't remember exactly, but it was either late in 1952 or early in 1953. I would say it would be in either the late winter of '52 or the early spring of '53 that the assignment was made.

Q. At the time of this contract of April 7, 1954, was that assignment for the benefit of creditors still in full force and effect?

A. I don't know technically whether it was or not.

Q. Had it ever been rescinded? Had you ever met with your creditors and had they agreed to

(Testimony of John Lucas Hudson, Sr.)

release the assignment [67] for the benefit of creditors? A. I don't think so.

Q. Who was the assignee? Who was the person to whom you assigned your property?

A. It was Mr. Engleman who was the head of it.

Q. You mean the Credit Managers Association of Southern California? A. Yes, sir.

Q. Did you ever receive any moneys back from that assignment for the benefit of creditors?

A. No.

Q. Did you acquire any property after that assignment for the benefit of creditors?

A. No.

Q. Was all of your property assigned in that assignment? A. It was.

Q. In that assignment for the benefit of creditors was there any sort of agreement that any future profits or moneys would go into that assignment, or was it merely an assignment of the property that you had at that time?

A. So far as I know, it was merely an assignment of the property I had at the time.

Q. Did your wife participate in that assignment for the benefit of creditors?

A. No, I don't think so. [68]

Q. Did she sign any of the papers, do you know? A. I don't think so.

The Referee: Mr. Hudson, you are familiar with the list of creditors set forth in your bankruptcy proceeding, are you not?

(Testimony of John Lucas Hudson, Sr.)

I show you the schedule here showing $327,471.16 worth of liabilities.

Is that your signature attached thereto?

The Witness: Yes, your Honor.

The Referee: Were those creditors in effect at the time the agreement between Pacific Palmdale Development Company and Lloyd R. Reeve, Incorporated was entered into on April 7, 1954?

The Witness: Were they in effect?

The Referee: Yes. In other words, did you owe all of the indebtedness set forth in your bankruptcy schedules? The Witness: I think so.

The Referee: And those creditors were in effect at the time the corporation known as Pacific Palmdale Development Company was formed under the laws of the State of California?

The Witness: Yes.

Mr. Bartley: Your Honor, the answer of the respondent, on page 2 at line 4, admits that it was organized on April 6, 1954, and that is the only reason that the Trustee hasn't brought in a certified copy of the Articles of Incorporation. [69] It is admitted by the respondents that was the date of incorporation.

The Referee: The Court has read the answer and is familiar with the answer, counsel.

Q. (By Mr. Bartley): Mr. Hudson, before you signed this agreement you signed in Washington, which we have been calling the agreement of April 7, 1954——

(Testimony of John Lucas Hudson, Sr.)

A. I think actually it was on the 8th. That is when I think it was.

Q. Had you had any discussions with either Mr. Granger or your wife as to what position you were to hold in this then prospective corporation?

A. No, I didn't, except that I had discussed with Mr. Granger that I wouldn't hold any position as a stockholder or an officer, and that I couldn't hold anything like that.

Q. Did you discuss why you couldn't hold anything like that; position of an officer or shareholder?

A. Mr. Granger told me until I received a release from the creditors or was released in bankruptcy that I could not rehabilitate myself until such a time, if I earned anything, if I should get a good contract and make a sizeable amount of money that I would never really ever be able to get started, because that would belong to the creditors.

Q. In other words, the only reason for not having been an officer or a shareholder or participated in this corporation was so that your creditors could not get any [70] part of the corporation. Is that right? A. No.

Mr. Granger: I will move to strike the answer for the purpose of making an objection, on the ground it is immaterial.

The Referee: The answer may be stricken. It probably does call for a conclusion, and the objection is sustained upon that ground.

Reframe your question, counsel.

(Testimony of John Lucas Hudson, Sr.)

Q. (By Mr. Bartley): Mr. Hudson, what I am getting at is this: Upon what basis did you assume the authority to execute the contract in Washington? You have testified you had no discussion as to being an officer or the like, yet you signed this contract and executed it in Washington. On what basis did you sign that contract?

A. When I hadn't seen the contract, nor known for sure that the contract would be with Pacific Palmdale, but Mr. Reeve brought the contract back to Washington with him after Mr. Minton and Mr. Granger had drawn the contract up, I phoned Mr. Granger from Washington, and Mr. Granger's opinion was that the contract should be executed before any effort was made, and before any work was done in connection with the grain bin job, and Mr. Granger authorized me to sign that contract. But he only authorized me to do that one thing as treasurer of the corporation, due to, Mr. Granger said, the fact that Mr. Granger himself never had an opportunity to even sign it or have Mrs. Hudson sign it, because Mr. Minton, [71] he explained, just barely could make connections for Mr. Reeve and me to meet in Washington, so therefore that is the way it had to be.

Q. When was this telephone conversation from Washington to Mr. Granger?

A. I think it was—I had two conversations, and I think this one was on the 7th or 8th.

Q. Did you have any discussion as to why you would sign it as treasurer of the corporation?

(Testimony of John Lucas Hudson, Sr.)

A. I relied entirely on what Mr. Granger told me about it. I didn't have any—he just told me it was all right for me to do that, and in the emergency of the situation, since no one was in Washington but me that he knew, and I was familiar with the deal by then.

Q. Did you, prior to having this telephone conversation with Mr. Granger, read the agreement?

A. Indeed. Mr. Reeve brought the agreement when he arrived. We didn't sign the agreement, but he presented me with a copy to analyze and to read.

Q. Did you discuss any of the terms of the agreement with Mr. Reeve?

A. I didn't discuss a thing with Mr. Reeve about it. It was drawn up by Mr. Minton and Mr. Granger, and Mr. Granger—I read the contract, and knowing that Mr. Granger had drawn it up I was prepared to do what I was instructed to do and sign it. [72]

Q. Did you discuss any of the terms of the agreement with Mr. Granger other than as you signed as treasurer of the supposed corporation?

A. I signed as treasurer. No, not particularly after I had read the contract. I wasn't contemplating going to an attorney—in my opinion it was equitable, but I didn't consider my opinion too important anyway.

Q. Prior to the incorporation you testified you had some discussions about the corporation and that names were suggested and so forth——

(Testimony of John Lucas Hudson, Sr.)

A. I didn't say names were suggested.

The Referee: Let counsel finish his question.

Q. (By Mr. Bartley): (Continuing) You testified that Mr. Granger's name was suggested, Mr. Bloom's name was suggested by your wife. Was there any discussion as to Mr. Granger's connection with this corporation at that meeting?

A. At which meeting?

Q. At any of the meetings before the incorporation of this corporation was there any discussion as to what Mr. Granger's connection was to be?

A. As testified to in the earlier questions you asked me, I thought you were referring to when Mr. Granger first approached me about it a long time ago, and the discussion was simply that Mr. Granger was interested in making some money and setting up a corporation that could utilize my experience in the construction business, and my background; [73] my very successful background until I went broke.

Q. Was there any discussion as to what percentage interest Mr. Granger would have in any such venture?

A. Was there ever a discussion at any time?

Q. Prior to the time of incorporation, yes.

A. No, not—are you referring specifically now to a grain bin?

Q. I am referring specifically to the incorporation of a corporation which subsequently became known a. Pacific Palmdale Development Corporation, Incorporated, or any other corporation which

(Testimony of John Lucas Hudson, Sr.)

you proposed to incorporate through the services of Mr. Granger.

A. Not on a corporate setup, but at the time Mr. Granger drew the agreement up for my wife and for me to sign, I didn't have very much money, and, in fact, I didn't have any. I couldn't pay Mr. Granger, and he had this idea at the time, and I told him I would pay him 12 per cent personally of anything that I made until he had earned say $40,000. That was just a figure out of thin air. I was so appreciative and grateful for being able to have an attorney.

Then there was another matter that you didn't ask me about concerning my son who got involved in an accident, and Mr. Granger helped me out on that, too.

Q. Let me ask you specifically about this 12½ per cent that you referred to——

A. 12 per cent, I think it was. [74]

Q. Was that the agreement that was to be carried over into a corporation?

A. No, not necessarily.

Q. What do you mean by not necessarily?

A. I mean there wasn't any agreement made as to how much Mr. Granger would expect his share to be in connection with any business done under a future corporation that might be formed. It was just an idea that Mr. Granger had, and I was willing to go along.

Q. Mr. Hudson, did you have any discussion with your wife prior to the incorporation of this

(Testimony of John Lucas Hudson, Sr.)

corporation regarding the organization of a corporation and regarding Mr. Granger setting up the corporation?

A. I testified in your earlier interrogation about that, didn't I, counsel?

Q. Yes.

The Referee: Read the question to the witness.

(Question read.)

The Witness: Well, insofar as——

The Referee: Did you have any such conversation?

The Witness: Yes.

The Referee: Tell us what it was.

The Witness: The date, it was quite late——

The Referee: Counsel at this time is not asking you for the date. He wants to know if you had a conversation, and if you did, tell us what was said in it. [75]

Q. (By Mr. Bartley): Yes, when did it occur and what was said?

A. It occurred, it seems to me, it was sometime in March, or it might have been late February or early March, when Mr. Granger discovered that Palmdale would be a good place to build.

The only discussion was that if anything materialized from the Palmdale deal that my services would be available to the corporation.

Q. By the way, was your conversation with your wife that you make your services available to her or to a separate entity?

A. The conversation was that I would make my

(Testimony of John Lucas Hudson, Sr.)

services available to whatever company or corporate structure that Mr. Granger should happen to set up, if, as and when there would be some business, a prospect of making any money.

Q. Mr. Hudson, at or about April 6, 1954, did your wife have any property of her own?

A. No.

Q. Did she have a bank account?

A. No. I don't think so.

Q. Did she own any insurance policies or other property? A. No.

Q. Mr. Hudson, isn't it a fact that sometime during March of 1954 you had some conversations with Mr. Philip [76] Bloom regarding a real estate transaction in Palmdale?

A. Well, I don't know about the date.

Q. Early in the year of '54?

A. Well, I think yes, somewhere along in there. I don't know how early in the year it was. It may have been in March.

Q. Isn't it a fact that you discussed with Mr. Bloom the setting up of a corporation to handle the building of residences or land development in the area of Palmdale?

A. Yes, somewhere along in there I did.

Q. Isn't it a fact that you are the only one who negotiated with Mr. Bloom regarding this land development transaction in Palmdale?

A. That is not a fact. My wife first negotiated with Mr. Bloom, as I testified before.

Mr. Bloom discussed it with my wife first. Th

(Testimony of John Lucas Hudson, Sr.)

is all there is to it. When he became interested in it then I discussed it with her.

Q. Isn't it a fact that you are the one who worked out the details with Mr. Bloom?

A. No, it isn't a fact at all.

Q. Who did? A. Mr. Granger.

Q. Isn't it a fact that you, through Mr. Granger, are the one who worked out the details on this land deal? A. I through Mr. Granger? [77]

Q. That is correct. Didn't you tell Mr. Granger the details and tell him what to discuss with Mr. Bloom?

A. No, I did not.

I am a construction man, and that is where I come into the picture.

Q. Who referred Mr. Bloom to Mr. Granger?

A. Mr. Granger and I were going to look at some land in Palmdale——

Q. Who was it specifically that referred or introduced or arranged a meeting between Mr. Bloom and Mr. Granger? A. I invited——

Q. Just the name will answer that question.

A. I invited Mr. Bloom to go to Palmdale with Mr. Granger and me to look the situation over.

Q. Isn't it a fact that prior to the early part of April, 1954, the land development deal in Palmdale had fallen through? A. That is not a fact.

Q. Did the deal fall through? A. It did.

Q. Approximately when did you know that it had fallen through?

(Testimony of John Lucas Hudson, Sr.)

A. Approximately—I would say—if I had my files on that I could tell you pretty close.

Q. Approximately when was it, before you went to Washington or afterwards? [78]

A. The deal hadn't completely fallen through until all the grain bins had been fabricated and the grain bin deal was practically finished.

Q. Did you ever receive any word from Mr. Bloom that he was no longer interested in the transaction on the property in Palmdale?

A. Did I ever receive word from Mr. Bloom that he was no longer interested in Palmdale?

Q. That is right, and that your relationship was terminated?

A. Did I receive word from Mr. Bloom to that effect when the deal was lost; when there wasn't a deal?

Q. Did you receive a letter from Mr. Bloom dated April 12, 1954, which notified you that he no longer had any connection with you?

A. No, I did not.

Q. Had you heard from Mr. Bloom by telephone or personal contact prior to that date that he was no longer interested in the transaction?

A. You asked before if he had a——

Q. I am specifically interested in the transaction.

A. You are specifically interested in the Palmdale deal?

Q. The Palmdale transaction.

(Testimony of John Lucas Hudson, Sr.)

A. Now may I have the question, please, Mr. Reporter, I didn't get it. [79]

(Question read.)

The Witness: What transaction?

Q. (By Mr. Bartley): The transaction in Palmdale.

A. I did not receive any statement or letter from Mr. Bloom that he was not interested in that transaction.

Q. Did you conduct negotiations with a Mr. Wilbur regarding the Palmdale transaction, or any transaction in Palmdale, early in 1954?

A. No, I myself didn't negotiate any specific deal with Mr. Wilbur. Mr. Wilbur was going to help me get the deal; help me with a deal if it looked like it could be a deal. Mr. Wilbur expressed a willingness to do that.

Q. When did your association with Mr. Wilbur, or your discussions with Mr. Wilbur, regarding the Palmdale transaction terminate?

A. They didn't terminate until the deal fell through.

Q. Approximately when was that?

A. Well, it hasn't been so very long ago. I would say possibly last winter. That is a guess now. That would be about, let's say maybe November or December of 1954 or January of 1955.

Q. Mr. Hudson, did you have any conversations with Mr. Bloom regarding this grain elevator transaction to which we have been referring?

Mr. Granger: When, counsel?

(Testimony of John Lucas Hudson, Sr.)

Q. (By Mr. Bartley): In 1954; early 1954? [80]

A. In early 1954?

Q. Prior to the date that the contract was signed, in order to be more specific.

A. Prior to the date——

Q. The contract was signed in Washington.

A. You mean the joint venture contract?

Q. That is correct.

A. No, I don't think I had any conversation with Mr. Bloom.

I don't know for sure whether it was immediately following the—I did have a conversation, but whether it was prior to the date that it was signed or following the date it was signed, I don't know.

Q. Subsequent to the signing of this contract did you have any conversations with Mr. Bloom regarding this grain elevator deal?

Mr. Granger: Which contract, counsel?

Q. (By Mr. Bartley): This contract that was signed in Washington is the only contract I am referring to.

A. As I stated before, either just prior to my departure for Washington or subsequent to my departure, I mean, my arrival back from Washington, I did explain to Mr. Bloom that there was a prospect of a grain bin contract, and that if he—his interests, if he wanted to set them up another way to protect his interests if Mr. Granger would use Pacific Palmdale, which means it must have been prior to it, because [81] I distinctly remember getting his permission whereby he would work his

(Testimony of John Lucas Hudson, Sr.)

interest in a separate corporate deal of his own on the Palmdale thing.

Q. Did you make an agreement at that time that he was to have no interest in any of the moneys that came in from this contract signed in Washington?

A. No. In fact, Mr. Bloom—I don't remember whether it was before or after, but Mr. Bloom was very interested in knowing that I had done grain bins and getting into a grain bin deal, and I had asked him long before I asked Mr. Reeve if he could finance and bond a job of that size.

Q. What was your agreement with Mr. Bloom? What was your agreement with him relating to the grain elevators? This morning you testified Mr. Bloom was to have no interest in the grain elevator transaction. A. That is correct.

Q. Is that correct? A. That is correct.

Q. What interest was Mr. Bloom to have in the corporation, if any?

A. In Pacific Palmdale, in the Palmdale operation?

Q. The corporation. You hadn't named the corporation yet that you were going to form, but what interest was Mr. Bloom to have?

A. I don't remember exactly. Mr. Granger was working on all of those things. [82]

Q. To the best of your knowledge what interest was Mr. Bloom to have had? Certainly you remember something of the conversations.

A. Yes. To the best of my knowledge it was

(Testimony of John Lucas Hudson, Sr.)

somewhere between, I would say between 20 per cent and 50 per cent. I am taking a lot of scope there, but somewhere in there.

Q. What interest were you to have had in Palmdale?

A. I wasn't to have had any interest in Palmdale.

Q. Who was to have the remaining interest outside of Mr. Bloom's interest?

A. Mr. Granger was to work that out between Mrs. Hudson and my son William Hudson and himself.

Q. What were your wife and your son to contribute to this corporation.

A. My son has had considerable experience in the construction business. He was to come in and work.

The Referee: How old is your son?

The Witness: He is 27.

The Referee: Does he live at home with you?

The Witness: No, your Honor, he lives in Portland; he and his family. He has three children.

The Referee: Was he living in Portland at the time this agreement was entered into between Lloyd R. Reeve, Incorporated and Pacific Palmdale Development Company, a corporation?

The Witness: Yes. [83]

The Referee: Did he ever go to Washington in connection with these negotiations?

The Witness: No, he didn't. He was a superintendent of the fabrication of the grain bins.

(Testimony of John Lucas Hudson, Sr.)

The Referee: Has any application for the issuance of stock ever been made by the corporation?

Mr. Granger: No, it has not.

The Referee: No application has ever been filed, nor has any permit to issue stock ever been issued. Is that correct?

Mr. Granger: No stock has ever been issued. I will get to that later. A declaration of interest was made in the minutes of the directors' meeting, but no application for permit to issue stock has ever been made.

Q. (By Mr. Bartley): Was any agreement ever entered into by yourself and Mr. Wilbur respecting what interest he might have provided there was a deal there in Palmdale. A. No.

Q. At the time we left the assignment for the benefit of creditors, Mr. Hudson, we were discussing discussions your wife had with you relating to this contract which was signed in Washington. When did those discussions occur?

A. May I have that question again?

The Referee: Read the question.

(Question read.)

Q. (By Mr. Bartley): At the time we changed the subject, [84] and I changed the question, Mr. Hudson, you were just testifying and going to answer a question regarding when these conversations with your wife occurred.

A. I just don't remember. I mean, I live at home with my wife.

Q. Approximately how long prior to the time

(Testimony of John Lucas Hudson, Sr.)

that you went to Washington did these discussions take place?

A. Well, I imagine just shortly before I left. I mean, my wife knew why I left.

Q. What was said between the two of you?

A. Well, I don't remember. I couldn't quote verbatim what was said between the two of us.

Q. To the best of your recollection what was said?

A. To the best of my recollection, we were hoping that a contract would materialize, and the arrangement — the idea that Mr. Granger had proposed and had in mind for me, as well as for Mrs. Hudson, would work out well, and that was—I don't remember any specific conversation.

Q. Did you have any conversation regarding the organization of the corporation? A. No.

Q. I mean in the year 1954? A. No.

Q. Prior to the signing of this agreement in Washington?

A. Do you mean did we have any—— [85]

The Referee: The Court does not like to interrupt or hasten counsel along, but aren't we being somewhat repetitious? The Court wants to give both counsel all the latitude in the world, but this seems to be taking up needless time.

Mr. Bartley: Yes, sir.

Q. Mr. Hudson, while you were in Washington did you deliver to Mr. Reeve a set of plans and specifications to be submitted with the bid?

(Testimony of John Lucas Hudson, Sr.)

A. No, I didn't deliver anything to him. I showed him a set of plans.

Q. Did you help prepare any plans or specifications to be submitted with the bid?

A. Yes, in Washington I did. I went and talked to the engineer over there to determine what their requirements were engineeringwise and so forth, and the agricultural engineer to determine that, and then I altered the plans and specifications to meet the engineering requirements, right in the Statler Hotel.

Mr. Bartley: I have no further questions at this time, your Honor.

Cross Examination

Q. (By Mr. Granger): Mr. Hudson, I hand you what purports to be an agreement and ask you to state if you have seen that before?

A. Yes, I have.

Q. When with reference to the date that it bears, the [86] 15th of July, 1953?

A. I saw it on that date.

Q. The name John L. Hudson, is that your signature there? A. Yes, it is.

Q. Is that the signature of Blanche V. Hudson appearing on it; is that your wife's signature?

A. Yes, it is.

Q. On or about that date did you appear before Ruth Beeman with your wife and give the acknowledgment? A. Yes, I did.

Mr. Granger: That is offered in evidence.

(Testimony of John Lucas Hudson, Sr.)

The Referee: The document offered will be received as Respondents' No. C.

Q. (By Mr. Granger): Now I hand you a document bearing date of April 20, 1954, Santa Monica, California, and ask you to state whether the signature John L. Hudson appearing in the lower left-hand corner is in your handwriting?

A. Yes, it is.

Q. Do you know whose handwriting appears in the words "Merrill L. Granger" after "Pacific Palmdale Development Company"?

A. Yes, I do.

Q. Whose signature is that?

A. That is your signature, Merrill L. Granger.

Q. You are familiar with my signature? [87]

A. Yes, I am.

Q. Mr. Hudson, do you have a duplicate copy of that document? A. Yes.

Q. When did you receive it and under what circumstances?

A. Well, I think I received it right after the 28th of April, because that is the day I checked out of the hotel.

Q. What hotel?

A. The Hotel Senator in Sacramento.

Q. Do you know when you arrived at the Hotel Senator in Sacramento?

A. Yes. I arrived there on the morning of the 20th of April.

Q. Did you receive from the hotel a statement as to its bill against you? A. Yes, I did.

(Testimony of John Lucas Hudson, Sr.)

Mr. Bartley: We are not doubting the date of the document, counsel.

Q. (By Mr. Granger): Mr. Hudson, on the date of the document did you check into the Hotel Senator at Sacramento? A. Yes, I did.

Q. And you stayed there continuously until late that week?

A. Yes, I did. I checked out of there on the 28th.

Q. You returned to Los Angeles then? [88]

A. Yes, I did.

Q. Later that week? A. Yes.

Q. About the 28th? A. Yes.

Q. Do you remember just generally the subject matter that brought about your return at that time? A. Yes, I do.

Q. What was it generally; just generally?

A. Just generally, in my numerous long distance conversations with Mr. Reeve during the eight days I was up there setting up the organization — Mr. Reeve had informed me he hadn't yet received his bond, and that he was having trouble getting it; that the people backed down on him on getting the bond.

Q. Did you then return to Los Angeles and Santa Monica in connection with that subject matter?

A. Yes, that is the only reason I came back.

Mr. Bartley: I will object to this line of questioning as irrelevant. I fail to see any connection this bond has with the subject matter of this litigation.

(Testimony of John Lucas Hudson, Sr.)

The Referee: As far as the Court can see it is irrelevant and immaterial unless counsel can point out to the Court something that the Court is not cognizant of at the moment.

Mr. Granger: The circumstances, that is what would [89] explain the date that the document was signed by Pacific Palmdale and the date of May 3rd.

The Referee: Suppose there was a delay in getting the bond, what difference does the reason for it make? What is material here is whether or not this corporation is an alter ego of the bankrupt.

Mr. Granger: I don't think it is particularly material.

Q. On May 3rd, do you remember the day of the week that was in 1954, just from your memory?

A. It was a Monday, I believe.

Q. Is that the date on which you affixed your signature to that document? A. Yes.

Q. And returned one to me?

A. Yes, that is right.

Q. And at that time you signed the document, the duplicate of this document? A. Yes.

Mr. Granger: That is offered in evidence as Respondents' next in order.

The Referee: The letter dated April 20, 1954, will be received as Respondents' No. D.

Mr. Granger: I will be privileged to call the bankrupt later on, will I not, your Honor?

The Referee: Yes, you may call him later on as your [90] witness.

(Testimony of John Lucas Hudson, Sr.)

The Court wishes to ask Mr. Hudson one or two further questions while he is on the stand.

Did Mr. Merrill L. Granger put any money into this corporation?

The Witness: Well——.

The Referee: Did he or did he not?

The Witness: Yes.

The Referee: How much money has he put into the corporation?

The Witness: Well, I think he put — well, I don't know exactly. He paid for the cost of incorporating.

The Referee: Other than advancing or paying for the cost of incorporating the company, has he ever furnished any money to the corporation?

The Witness: No, not that I know of.

The Referee: All right, proceed.

Redirect Examination

Q. (By Mr. Bartley): Mr. Hudson, I show you a document which purports to be the minutes of a meeting of the Board of Directors of Pacific Palmdale Development Company, dated June 3, 1954.

Mr. Granger: Perhaps I can save a little time. I will stipulate that the document you have is a copy of the minutes of the directors' meeting of Pacific Palmdale Development Company held June 3, 1954, and that particular copy was [91] delivered by me to the Lloyd R. Reeve, a corporation, as a promise for the payment of $15,000 to Mr. Hudson.

(Testimony of John Lucas Hudson, Sr.)

Mr. Bartley: Will you also stipulate that the certification on the back of the document contains the language, in the last three lines: "the original of which minutes are in her possession. She further certifies that such corporation is without seal."

Mr. Granger: I would say that is right.

Mr. Bartley: It will not then be necessary to introduce the document.

Mr. Granger: No, unless you want to read it into the record.

Mr. Bartley: All right.

The Referee: I think you better read it into the record.

Mr. Bartley: I will read it into the record.

This exhibit will have to be introduced in another trial, your Honor, that is the reason I am doing this.

The heading of this document is, "Minutes of Special Meeting of Board of Directors of Pacific Palmdale Development Company, a California corporation, held June 3, 1954 A.D., at 422 Wilshire Boulevard, Santa Monica, California."

In the body of the instrument it states as follows:

"The meeting was called to order by Merrill L. Granger, who presided as Chairman.

"All members of the Board of Directors were present, [92] and each signed a Waiver of Notice of said meeting, which waiver in writing was ordered by the Chairman to be filed with the minutes of the meeting.

(Testimony of John Lucas Hudson, Sr.)

"Blanche V. Hudson acted as secretary of the meeting.

"The Chairman declared the purpose of the meeting was to consider authorizing Merrill L. Granger, on behalf of the corporation, to execute in the name of the corporation a direction to Lloyd R. Reeve, Incorporated, a corporation, a direction to pay to John L. Hudson, Sr. certain sums of money and charge the payment to this corporation.

"Upon motion duly made and seconded and unanimously carried, the following resolution was adopted: 'Resolved that Merrill L. Granger be and he is hereby authorized on behalf of this corporation and in its name to direct Lloyd R. Reeve, Incorporated, a corporation, to pay unto John L. Hudson, Sr. forthwith the sum of Fifteen Thousand Dollars ($15,000.00) and to charge the same to the account of this corporation in connection with the joint venture of this corporation and said Lloyd R. Reeve, Incorporated, for the construction of grain bins for the Commodity Credit Corporation. Such direction to be in such form as said Merrill L. Granger, in his discretion, may adopt.

"'It is further resolved that said Merrill L. Granger is further authorized in the name of this corporation and on its behalf to execute a consent in writing to said Lloyd R. Reeve, Incorporated, a corporation, to withdraw for its use [93] the sum of Fifteen Thousand Dollars ($15,000.00) from funds of said joint venture, to be charged to said Lloyd R. Reeve, Incorporated.'

(Testimony of John Lucas Hudson, Sr.)

"Upon motion made and duly seconded and unanimously carried, the meeting was adjourned."

It bears on the right side the signature of Blanche V. Hudson, underlined, with the wording "Secretary of Meeting."

On the left side, "Attested to:" Then there is a line and a signature "Merrill L. Granger, Chairman."

On the back of this document is a typewritten page containing language as follows:

"The undersigned Blanche V. Hudson certifies she is a director of Pacific Palmdale Development Company, a California corporation; that she presided as Secretary at a meeting of the directors of said corporation held on June 3, 1954, at 422 Wilshire Boulevard, Santa Monica, California; that there is attached hereto a true and correct copy of the minutes of said meeting, the original of which minutes are in her possession; she further certifies that said corporation is without seal."

May it please the Court, at this time we have no further questions to ask of Mr. Hudson.

In view of his testimony I wish to request additional time to subpoena Mrs. Hudson and Mrs. Bloom to testify as regards the matters to which Mr. Hudson has testified.

The Referee: The Court will take your request [94] under submission and decide later on whether it is necessary.

Mr. Granger: At this time I would like to asso-

ciate with me as attorney for the respondents Mr. William De Falla.

The Referee: The motion to associate Mr. William De Falla as counsel for the respondents is granted.

Mr. De Falla: I would like to call Mr. Granger and ask him to take the stand, please.

The Referee: Mr. Granger, come forward and be sworn, please.

MERRILL L. GRANGER

called as a witness, being first duly sworn, testified as follows:

The Referee: Please be seated and state your full name.

The Witness: Merrill L. Granger.

The Referee: It is now 10 minutes after 3. We will take our customary afternoon recess at this time for 10 minutes.

(Recess.)

Direct Examination

Q. (By Mr. De Falla): Would you state your occupation, please?

A. I am a lawyer, a member of the State Bar of California.

Q. Do you know the bankrupt, John Lucas Hudson?

A. I do. I have known him for some five or six years. [95]

Q. Would you briefly give us your relationship with him, either in professional or other matters,

(Testimony of Merrill L. Granger.)

within say the last three years?

A. The last three years?

Q. Yes.

A. Three years ago—if I represented him my memory is not quite clear on this, but if I represented him at all it was in connection with a piece of litigation pending in Santa Monica. I think that was ended three years ago.

Q. When was the next time?

A. The next time that I represented him was in, as distinct from any representation of members of his family, was on the occasion in 1953 in the summer when I prepared the document which is the agreement between himself and his wife, which has been introduced in evidence here.

The Referee: Are you referring to this document which has been marked Respondents' Exhibit C?

The Witness: That is right. I didn't represent him up until that time, and I wasn't engaged by him to draw that document Exhibit C. I represented him after the execution of Exhibit C in early 1954.

Q. (By Mr. De Falla): What was the nature of that particular representation?

A. His son had an automobile accident in Santa Monica, and Mr. Hudson's name happened to be on the automobile, and he was named as a defendant. I appeared and filed answers, [96] and finally settled the case for a nominal figure. Other than that I didn't represent him in any matter until he filed his petition in bankruptcy in this case, as I recall.

(Testimony of Merrill L. Granger.)

Q. Referring to the assignment for the benefit of creditors, which has been testified to, did you represent Mr. Hudson in that particular proceeding? A. No, I did not.

Q. Referring to Pacific Palmdale Development Company, Mr. Granger, can you give us from your own personal knowledge the origin of the name: the origin of the corporation as such?

A. Yes, I can give that.

Q. Whose idea was it?

A. It was mine, and it took birth this way: It had come to my attention that Mr. Hudson had made an assignment for the benefit of creditors, and I had met him and he discussed the fact of his assignment, and expressed some apprehension as to how he was going to get started in business again.

At that time I told him that I would like to plan a method of exploiting his experience and his skills, and I wanted to know particularly then whether if I did so his services would be available to me in anything that I set up, and he said they would.

Q. Excuse me, Mr. Granger. Did you initiate these conversations? [97]

A. I initiated the conversation and that conversation, and in preparation of some deal that I might evolve I asked him to prepare and have them execute the agreement which gave Mrs. Hudson the privileges to engage in the construction business and hold the profits as her separate property.

Q. At this particular time did you have, shall

(Testimony of Merrill L. Granger.)

we say, the germ of an idea by which you were going to utilize Mr. Hudson's knowledge?

A. Just the germ. I can't tell you the date, but it would be sometime, I would say, after Exhibit C was executed, that entirely on my own initiative I adopted the name of Sierra Construction Company, and sent a request to Washington, D. C. to the Commodity Credit Corporation to allow Sierra Construction Company to bid on any future wooden grain bin deals.

Q. Do you recall offhand about what time this took place?

A. I can't, except to say this: That many, many weeks had transpired and we were well into a transaction at Palmdale before I got a response from the Commodity Credit Corporation.

Q. Referring to this transaction at Palmdale of which you speak, would you give us briefly the details of that transaction?

A. Yes, sir. About that time Mr. Hudson was working as a building superintendent down at San Diego, and I [98] conceived the idea of housing construction. I wanted it on a substantial scale for two reasons: To make a substantial sum of money, and, secondly, because Mr. Hudson's particular skill was in mass production.

Q. Then, according to your testimony, you were familiar with Mr. Hudson's background, besides the representations that you already had made for him?

A. Oh, yes. Not only had I known Mr. Hudson for five or six years, but I suppose for 15 years or

(Testimony of Merrill L. Granger.)

more members of his family and members of my family were friends, but I hadn't met him personally up until that time.

Q. More specifically, was the Pacific Palmdale Development Company set up or the original idea was to build homes?

A. Yes. It started this way: One time, I, conceiving of the idea of building some place, went down to a headquarters in Los Angeles and sought from them what they term hot spots for their loans to indicate extensive, successful building, and I got a list of several places from an FHA office, which included, among others, the Palmdale area. So when Mr. Hudson was in Santa Monica from San Diego over a weekend I made an appointment to interview him and tell him that I would like to formulate something around the Palmdale area for housing construction.

Q. Can you give us an approximate date of this conference, Mr. Granger? [99]

A. Well, it would be sometime between the first of the year and March 1st of 1954.

At the time of this conference he expressed his willingness—oh, yes, he told me at that time, too, that he had met a man at San Diego who was perhaps interested in financing such construction.

I asked him to come to Palmdale with me and bring the man from San Diego along, and he did that. Sometime prior to, I would say March 1st, but not long before March 1, 1954, we made the trip to San Diego—Palmdale.

(Testimony of Merrill L. Granger.)

Q. Before we go any further would you identify this person, this man from San Diego?

A. I could describe him somewhat. He looked like he could be a brother of Lloyd Wright of this local Bar, but I don't know what the gentleman's name was.

Q. Then what happened?

A. Late in the week Mr. Hudson and I were to go to Palmdale, and Mr. Bloom happened to be at Mr. Hudson's home that morning, and it seems they were old friends, so between them it was arranged that Phil Bloom would go to Palmdale just for the trip. In fact, we went in his car instead of mine, and we went downtown and got this man from San Diego, who had another appointment, and made the trip to Palmdale.

At Palmdale we called at a real estate office and made inquiries about available land.

They said there was only one large tract of land [100] available for immediate subdivision, and that was owned by a Mr. Thornburg, and it was located some four or five miles out from the main portion of Palmdale. Then we returned to Santa Monica, Los Angeles.

Q. Mr. Granger, at this particular time how far along were you with the mechanics of this corporation which you originally planned to utilize Mr. Hudson's abilities in connection with?

A. I wasn't along with it. I hadn't started at that time.

Q. However, you had the idea?

(Testimony of Merrill L. Granger.)

A. It started about that time.

Q. Going back over the persons who went to Palmdale, they included yourself and Mr. Hudson and Mr. Bloom. Is that correct?

A. Yes, and this gentleman from San Diego.

Q. When you returned to Santa Monica was there any more activity on that particular project?

A. Yes, there was. In order to save time and working through the real estate dealer at Palmdale, we learned that Mr. Thornburg lived in Los Angeles, out Compton Boulevard way, and had an office there, and I asked—by the way, Mr. Bloom by this time had suggested he might like to get into that deal, so I asked him and Mr. Hudson to look up Mr. Thornburg and see what could be done, particularly on the problem of subordinating his purchase price to temporary [101] financing.

Q. Is Mr. Bloom an attorney, by any chance?

A. No, he is a construction man in Culver City.

Q. After you had suggested to Mr. Hudson and to Mr. Bloom that they talk to Mr. Thornburg, to your knowledge, did they do that?

A. Yes, they did. There was a good deal that went on after that, because Mr. Thornburg was quite receptive. In fact, so much so that he eliminated problems of finance, because when he learned that we were planning to give someone a very substantial portion of the profit for financing, he proposed to Mr. Bloom and to Mr. Hudson and myself that he would be glad to do that financing for that profit, and it wouldn't cost as much. After that Mr.

(Testimony of Merrill L. Granger.)

Bloom went to San Diego and took bids from sub-contractors.

The Referee: Is there any doubt that this was an abortive plan in Palmdale and that nothing came from it?

The Witness: Oh, yes.

Mr. De Falla: I submit that we should develop this thing; this particular phase of it, because it is our contention that the corporation was set up in good faith under Mr. Granger's direction, and you might say force, that this matter was progressing along at a certain stage, and that the idea had been born, that the mechanics were on their way to being completed, and that the subsequent contract involving the grain bins and so forth merely fitted into Mr. [102] Granger's plans.

The Referee: Is there any question that Mr. Bloom eventually dropped out of this corporation and had nothing to do with it, and there was no development undertaken or prosecuted in Palmdale or anywhere else, and this corporation changed over to the grain bin deal?

Mr. Bartley: There isn't any doubt of that. The only point that the Trustee seeks further to point out is that prior to the time that Articles of Incorporation were filed Mr. Bloom had not only dropped out, but had notified these people that he had dropped out, and therefore there weren't three incorporators, only two.

Mr. De Falla: As a matter of fact, on that par-

(Testimony of Merrill E. Granger.)

ticular point, your Honor, I would like to question Mr. Granger.

Q. To the best of your knowledge, Mr. Granger, at what time did Mr. Bloom express, either directly or by implication, his disinterest in the corporation, have you any idea?

A. Yes, immediately after he was informed that the joint venture agreement had been made with Mr. Reeve, and not only that, but he presented his written resignation to Pacific Palmdale. It was dated in blank. I don't remember what date it was presented, but the corporation acted on it in about the middle of May.

Q. I have before me a letter, Mr. Granger, which is signed by a Philip Bloom, the substance of which tells that the man is no longer interested in the corporation. [103]

To the best of your knowledge, did you see this letter?

A. I received it from the possession of Mrs. Hudson, for the purpose of incorporating it into the corporate records, and did so by resolution at a meeting that was held on May 15th following that in 1954.

Mr. Bloom, as early as March, 1954, had signed Articles of Incorporation and acknowledged them, and I sent them to the Secretary of State on the 3rd day of April, 1954, and the charter was issued by the Secretary of State's office on April 6, 1954.

Q. To the best of your knowledge, the date of the execution of this letter was April 12?

(Testimony of Merrill L. Granger.)

A. I heard since—I didn't just know when it was executed, but it could be at the time it showed up in my possession, shortly after that, and I just delayed acting on it, but it could have been the 12th.

Mr. De Falla: Respondents will offer that in evidence as the exhibit next in order.

The Referee: The letter of resignation will be received as Respondents' Exhibit E.

Q. (By Mr. De Falla): Mr. Granger, I show you a letter from the Veterans Administration, with a signature at the bottom by one Thomas J. Graham, Appraiser Supervisory, wherein the language there it gives a tentative agreement to property described therein, certain specifications and so forth. [104]

The date of that letter is April 5, 1954.

You, as a corporation officer, received this letter, I presume, did you not?

A. In the course of time it was sent to us at Mr. Bloom's address.

Mr. Bartley: I will object to that question and move that the answer be stricken, because the statements of counsel and the witness are both to the effect that this was not a corporation until April 6th.

The date the instrument bears is April 5th, your Honor.

The Referee: Read the question and answer, Mr. Reporter.

(Record read.)

The Referee: The objection is overruled.

Did you in due course of time receive it?

The Witness: I did.

(Testimony of Merrill L. Granger.)

The Referee: All of you witnesses seem to feel it necessary to go into a long dissertation every time a question is asked. This matter has taken two days on a case that should not have taken any more than a couple of hours. Let's get down to the meat of the case, gentlemen.

The Witness: I received that sometime after its date from Mr. Bloom.

Q. (By Mr. De Falla): To whom was this letter addressed?

The Referee: The letter speaks for itself.

The Witness: The street address is Mr. Bloom's.

The Referee: Are you offering this as Respondents' Exhibit next in order?

Mr. De Falla: Yes.

The Referee: It will be received as Respondents' Exhibit F.

Q. (By Mr. De Falla): As far as you were concerned, Mr. Granger, to the best of your knowledge this so-called deal in Lancaster was still alive as of April 5, 1954?

A. Yes, indeed, it was getting under way. It was getting well under way.

Q. I desire to correct Lancaster to Palmdale.

A. The answer is still the same.

Q. By this time you mentioned the Sierra Construction Company and your correspondence with the government. By this time had you received the answer to your bid?

A. By that time, the 5th of April, I had, and

(Testimony of Merrill L. Granger.)

I received it in a large brown envelope addressed to Sierra Construction Company.

After I received it I made an appointment with Mr. Hudson and told him that I would like to get under way on the grain bin program, to bid on that offer.

Q. Briefly, did the response from the government permit you to bid?

A. The bids were blank. The bids could be made by anyone.

The Referee: Whose address is 4264 Overland Avenue, [106] Culver City, California?

The Witness: Philip Bloom's.

Q. (By Mr. De Falla): In regard to this meeting with Mr. Hudson, was the topic in relation to your furtherance of the plan to utilize Mr. Hudson's talents?

A. It was. Pursuant to that I asked him—in the first place we would need some financing. I said it would look out for some, and I would like to have him look out for some financing, too. Sometime after that he reported to me, while at the office of Liff & Kim on the Palmdale deal, he had the reference to Mr. Reeve. So we decided to go ahead with Mr. Reeve to see if we could work out a deal with him.

Q. Was it about this time that you started the mechanics to get the Pacific Palmdale Development Company into existence?

A. I had started them before. I had started

(Testimony of Merrill L. Granger.)

them in March of 1954, and then went through negotiations with Mr. Reeve——

The Referee: The question simply was: About this time had you started the mechanics of Pacific Palmdale Development Corporation, and you answered that you had.

The Witness: I did.

Q. (By Mr. De Falla): When did you file those papers with the Secretary of State?

A. They were transmitted from my office on April 3, [107] 1954.

Q. At the time you transmitted them did you have that particular corporate organization in mind to follow on through with your plans for Mr. Hudson?

The Referee: That has been asked and answered. Let's not go into these repetitious sequences.

Mr. De Falla: I will rephrase the question and see if I can't get the information we desire.

Q. Were you conducting negotiations with Mr. Reeve through Mr. Hudson at approximately the same time that you were processing the papers to go to Sacramento? A. I was.

Q. Do you remember the date of the meeting of the corporation wherein you agreed to proceed with the joint venture contract and the trip to Washington? A. Yes.

Mr. Bartley: Just a minute. I will object to that question as far too leading. You are setting out something that this witness has not testified to.

Mr. De Falla: I will rephrase that.

(Testimony of Merrill L. Granger.)

The Referee: You don't have to rephrase it. The answer is in and the objection is overruled.

Would you read the question and answer.

(Record read.)

The Witness: I didn't mean the answer to be yes to that corporation, because there was no corporation at that [108] time. There was no corporate meeting before that time.

Q. (By Mr. De Falla): When you say there was no corporation at that time, would you explain how far the corporation had proceeded?

A. The Articles were drawn and had been transmitted to the Secretary of State, and I think on the date Mr. Hudson left for Washington, I think it was probably in the office of the Secretary of State.

Q. With reference to this joint venture contract, did you receive a call from Mr. Hudson on either the 7th or 8th day of April regarding the contract itself?

A. I did, from Washington, D. C.

Q. Can you give us the substance of the conversation?

A. Yes. He told me that Mr. Reeve had arrived in Washington, and that he had a copy of the contract which Mr. Minton and I had drawn, and he had examined it. From everything he knew, it was fairly stated: it fairly stated the arrangement, that what was the suggestion as to signing it on behalf of the corporation, and I told him his wife and I were authorizing him to sign as treasurer of the corporation for just that limited purpose.

(Testimony of Merrill L. Granger.)

Mr. De Falla: In order to preserve the corporate records I wonder if counsel will stipulate that the copy I handed to him is a copy of the original in our records.

Mr. Bartley: That I don't know. I don't know how I can stipulate to it. [109]

Mr. De Falla: I will submit the original for inspection.

Mr. Bartley: It is not a copy.

Mr. De Falla: By a copy I mean it is a reproduction.

Mr. Bartley: The upper part is different, so it is not a copy.

Mr. De Falla: If the Court please, I frankly see no way of submitting this as an exhibit.

Mr. Bartley: One relates to a meeting of May 15th and the other May 8th.

Mr. De Falla: I will introduce the originals, if you wish, but may I withdraw them by furnishing exact copies thereof?

The Referee: May the Court suggest if you are going to introduce a lot of corporate minutes that you present them to counsel for the Trustee collectively and see if we can save some time.

Mr. Bartley: I will do it by stipulating if they are duplicates or if they are at all relevant, I will stipulate that you can introduce these, and I will have no objection to the Court giving you leave to withdraw them and substitute photostats.

Mr. De Falla: I will withdraw them at the present time.

(Testimony of Merrill L. Granger.)

The Referee: You may, if you wish, introduce the originals and later on, if you furnish carbon copies or [110] photostatic copies or exact copies of any character you may withdraw the originals.

Apparently you two gentlemen can't get together as to whether they are correct copies or not.

How many witnesses does the Trustee in Bankruptcy have?

Mr. Bartley: I expect to have another one or two more questions of Mr. Hudson, and then the Trustee would like to call Mrs. Hudson and Mr. Bloom. Mr. Bloom would take maybe five minutes, and Mrs. Hudson maybe 15.

The Referee: How many witnesses, in addition to Mr. Granger, does the respondent have?

Mr. Granger: It would just be Mr. Hudson and I.

Mr. De Falla: I think this may save us time in the long run. I think we have located the original of this, counsel, and I think a cursory examination will satisfy you that it is a copy.

Mr. Bartley: I will stipulate that this is a copy, your Honor.

The Referee: Very well.

Q. (By Mr. De Falla): I show you here, Mr. Granger, what purports to be an original of the minutes of the Board of Directors of Pacific Palmdale Development Company, held on April 8, 1954.

The Referee: Is there any objection to the introduction of this document without the necessity of laying a foundation? [111]

(Testimony of Merrill L. Granger.)

Mr. Bartley: I will not stipulate to its contents, but for any purpose that it is offered, why, the only thing is we have no knowledge as to whether this meeting was actually held. There is no corporate seal even on the original.

The Referee: The only thing that the Court is asking counsel is if he wishes to waive the laying of a foundation; not as to the contents.

Mr. Bartley: We will waive the laying of a foundation.

Q. (By Mr. De Falla): Is this the document which you have referred to as the minutes when you said that it was put on the corporate records for the purpose of authorizing Mr. Hudson to act as Secretary pro tem while in Washington?

The Referee: Do you wish to introduce those, due to the fact that counsel has waived the necessity of laying a foundation?

Mr. De Falla: I will introduce this as being a copy which was stipulated to.

The Referee: The copy of the minutes of the meeting of April 8, 1954, at 10 A.M. will be received as Respondents' next in order, which is G.

Q. (By Mr. De Falla): Now, referring to the minutes of the Board of Directors again, Mr. Granger, do you recall the date on which the corporation formally offered Mr. Hudson, you might say, the deal in which his services were to be used?

A. I do. [112]

Q. What was that date?

A. April 20, 1954.

(Testimony of Merrill L. Granger.)

Mr. De Falla: If I may again, your Honor, I would like to submit these to counsel for comparison.

Mr. Bartley: We can't stipulate as to any further of these minutes until there has been some identification of the signature of Mr. Bloom. This is dated April 20th, and we have information that Mr. Bloom had terminated any association long before that.

Q. (By Mr. De Falla): At this particular meeting, Mr. Granger, do you recall who were present at the time?

A. Which meeting do you refer to?

Q. I am referring to the meeting of April 20, 1954. A. Mrs. Hudson and myself.

Mr. Bartley: We will stipulate this copy can be introduced for identification until such time as we can have the original and have Mr. Bloom testify as to his signature.

Q. (By Mr. De Falla): On the date of the meeting, Mr. Granger, who acted as the recording party? In other words, was there a secretary at the meeting?

A. Mrs. Hudson was secretary of the meeting.

Q. Are you familiar with Mrs. Hudson's signature? A. I am.

Q. I will direct your attention to the signature above the designation "Secretary." Is that Mrs. Hudson's signature? A. It is. [113]

Q. I direct your attention to the signature right

(Testimony of Merrill L. Granger.)

above the designation "Chairman." Do you recognize that, sir? A. It is my signature.

Q. Furthermore, Mr. Granger, was there at that particular time any recordation made of any waivers to the notice? A. There was.

Q. I direct your attention to the upper right-hand corner of the document here, specifically to the signature below that of Merrill L. Granger and above that of Blanche V. Hudson. Do you recognize that signature? A. I do.

Q. Whose signature is that?

A. Philip Bloom's.

Mr. De Falla: Have you examined the original of these minutes, counsel?

Mr. Bartley: Yes.

Mr. De Falla: I would like to submit these as Respondents' exhibit next in order, and stipulate they may be withdrawn upon the filing of photostats.

The Referee: Any objection to the introduction of these?

Mr. Bartley: No, but will counsel stipulate that if we produce Mr. Bloom that we will have the original in court at that time?

The Referee: This is the original.

Mr. Bartley: You can submit the carbon copy, counsel, [114] providing you will have the original in court.

Mr. De Falla: We will stipulate—I understood his objection to be until and when he establishes the signature of Mr. Philip Bloom.

(Testimony of Merrill L. Granger.)

The Referee: The carbon copy of the minutes of the meeting of April 20, 1954, will be Respondents' Exhibit next in order, being Exhibit H.

Q. (By Mr. De Falla): Briefly, from your knowledge, will you tell us the business that was discussed at that meeting and what was the upshot of the meeting of April 20th?

A. Mrs. Hudson and I formulated a definite offer to be made to Mr. Hudson, and we also considered the fact that Mr. Bloom had previously presented a resignation and declared that he didn't have any interest any longer in Pacific Palmdale, and we simply discussed that.

Then we determined——

Q. Excuse me, Mr. Granger. Referring back to the contract which had been signed in Washington by Mr. Hudson, at this time had this contract been accepted by the parties at this end? By that I mean had it been accepted by Pacific Palmdale Development Company or Reeve & Company?

A. I didn't know what the date of acceptance was by Mr. Reeve of the Commodity Credit Corporation contract. I didn't know at that time.

Q. Upon what premise did you make this offer to Mr. Hudson? [115]

A. Simply that I knew of an earlier transaction of his under which somewhat similar terms were defined. I wanted him to have $50,000 off the top, because as we term it, we were expecting a profit ourselves of over $100,000 variable, and more than that, we discussed the defining of the interests of

(Testimony of Merrill L. Granger.)

Mrs. Hudson and William Hudson and myself through the corporate structure, in that no stock was to be issued and we didn't plan the issuance of any stock.

Q. To the best of your knowledge at the time did you have a contract or did you not have a contract with the government? A. At that time?

Q. Yes. A. I didn't know.

Q. Was this offer of April 20th transmitted to Mr. Hudson? A. Yes, it was.

Q. Did you receive an answer from him?

A. Not until the following—well, May 3rd, the date it was signed.

Q. Was there a formal paper signed, or some agreement or some writing or correspondence that bound Mr. Hudson at that time?

A. We received back a form of our letter to him upon which he signed an acceptance at the bottom of the document. The letter was dated also April 20th. [116]

Q. I believe that letter has been previously introduced in evidence, but I don't know the number of that.

At this particular time, Mr. Granger, what was your position in the organization?

The Referee: I have here a letter from Pacific Palmdale Development Company to John L. Hudson, dated April 20, 1954, which has been received as Respondents' Exhibit D.

(Testimony of Merrill L. Granger.)

It is written on the stationery captioned "John L. Hudson Company."

The Witness: I was president and director of the corporation.

Q. (By Mr. De Falla): Had you been active in coordinating these affairs; actively participating up to and including this time?

A. Very much so.

Q. On the date of this acceptance, which we will refer to as May 3rd, were you in full control of the books and records of the corporation?

A. I had access to them, and usually prepared the minutes and documents in reference to the records.

Q. Up to this time was your activity in regard to this matter considerable; in that you acted in your capacity as president?

A. Indeed it was.

Q. Can you give us an estimate of the time involved that you spent with this particular problem? By that I don't [117] mean in days and months necessarily, but say during the period between early March and the consummation on May 3rd?

A. You mean in reference to what, the grain bin deal or Pacific Palmdale Development Corporation?

Q. The Pacific Palmdale Development Corporation itself.

A. I was quite active in connection with Pacific Palmdale beginning with prior to the 1st day of

(Testimony of Merrill L. Granger.)

March, 1954, and then I was active in it both ways; on the grain bin deal and the construction deal after I received the invitation to bid for the Sierra Construction Company.

Q. Referring again to the grain bin deal, did you do anything further with the name Sierra Construction Company? A. No.

Q. Was that a name of your own invention?

A. I adopted that simply for the original communication to the Commodity Credit Corporation from all I knew then.

Q. Can you explain in detail as much as possible how the original project, the one in Palmdale, merged, or shall we say—strike that and I will rephrase the entire question.

Can you explain in detail how it happened that the deal involving grain bins ended up as a project of Pacific Palmdale Development Company?

A. I can.

Q. I mean rather than Sierra Construction Company. [118]

A. I can.

Q. Will you, please?

A. At the time that I made my plan to meet with Mr. Minton and draw the joint venture agreement on April 6, 1954, I did not yet have a corporate charter that I knew of, and approaching the preparation of that contract with Mr. Minton I had previously told Mr. Hudson, just before his departure for Washington, that I might have to channel the grain bin deal into the Pacific Palmdale if we had a char-

(Testimony of Merrill L. Granger.)

ter, otherwise I didn't know what I would have to propose to Mr. Minton on the 6th as to the form of the agreement it would take, and the contracting parties and so forth. However, sometime prior to April 3, 1954, I had communicated with the Secretary of State's office to determine if the name Pacific Palmdale Development Company would be acceptable in his office for the corporation that I was planning, and having transmitted the articles to him on the 3rd day of April I felt at the time that I was in Mr. Minton's office that I had a charter, so without further ado we prepared the contract in the name of Pacific Palmdale Development Company.

Q. At this particular time, Mr. Granger, were you acting independently of Mr. Hudson?

A. Do you mean in a professional relationship?

Q. Yes. A. I was.

Q. Did you in any way undertake to represent him in [119] your capacity as a lawyer?

A. No, I did not, not in that respect.

The Referee: May I ask a question along that line?

The corporation was filed in the office of the Secretary of State April 6, 1954. Is that correct?

The Witness: That is true.

The Referee: And you say for some time prior to that, for several days, you had been in the process of preparing the Articles?

The Witness: Not that, your Honor, I had the Articles prepared as early as March of 1954.

The Referee: At that time you knew that Mr.

(Testimony of Merrill L. Granger.)

Hudson had made an assignment for the benefit of creditors, did you not?

The Witness: That is right.

The Referee: You knew that he was financially involved?

The Witness: He so reported to me.

The Referee: You had been his attorney and you knew he was financially involved.

Did you have a discussion with him as to the extent of his indebtedness?

The Witness: Yes.

The Referee: What did you understand the extent of his indebtedness to be?

The Witness: I understood that he had lost about a [120] quarter of a million dollars, and had an indebtedness of probably $300,000 or more.

The Referee: You represented him in connection with the preparation and the filing of the bankruptcy schedules here, did you not?

The Witness: That is right.

The Referee: When did you commence consulting with him in connection with that bankruptcy proceeding? When I say "him," I mean Mr. Hudson.

The Witness: I would say after his return from Washington, generally. I had considerable information of his affairs.

The Referee: When? The question is when did you first commence conferring with Mr. Hudson in regard to the filing of bankruptcy proceedings on his behalf in which you were his attorney?

(Testimony of Merrill L. Granger.)

The Witness: In the actual preparation of the petition?

The Referee: When did you commence conferring with Mr. Hudson in connection with the bankruptcy proceedings which you subsequently filed on his behalf?

The Witness: I would say after his return from Washington.

The Referee: When was that, approximately?

The Witness: Approximately the 9th day of April, 1954.

The Referee: So then at the same time that you were discussing with him the filing of bankruptcy proceedings on [121] his behalf, you were handling the formation of this corporation known as Pacific Palmdale Development Company. Is that correct?

The Witness: That is right.

The Referee: Proceed, Mr. De Falla.

Q. (By Mr. De Falla): I believe my last question involved your relations with Mr. Hudson——

The Referee: Repeat the question for counsel.

(Question and answer read.)

Q. (By Mr. De Falla): Mr. Granger, after the acceptance by Mr. Hudson of the offer which was signed on May 3rd, did you continue in your capacity as president of Pacific Palmdale Development Company?

A. For some period of time. I have been active on it at all times up until now.

Q. There has been testimony to the effect that there was friction or some form of disagreement be-

(Testimony of Merrill L. Granger.)

tween the principals, Reeve and Hudson. Is that correct?

A. Differences were between Reeve and Pacific Palmdale Development Company.

Q. When these differences between Reeve, Incorporated and Pacific Palmdale Development Company came to your attention, do you recall any visits made to Mr. Reeve's attorney?

A. Mr. Minton?

Q. Yes. A. Yes, I do. [122]

Q. Do you recall the approximate dates?

A. I have had several conferences with Mr. Minton. They dated from the time that the joint venture received a $100,000 check from the Commodity Credit Corporation.

Q. In your capacity as president, Mr. Granger, did you undertake to erase these difficulties between the corporations? A. I did.

Mr. Bartley: Just a moment. I will object to this question as irrelevant, and move that the answer be stricken as to the differences between the two.

I fail to see any relevancy unless we are going into the credibility of one or the other witnesses.

The Referee: The objection is sustained and the motion to strike the answer is granted.

Q. (By Mr. De Falla): Mr. Granger, can you then give us a brief picture of these meetings? Why did you seek out Mr. Minton?

Mr. Bartley: Object to that question on the grounds of irrelevancy.

The Referee: Your objection is sustained.

(Testimony of Merrill L. Granger.)

Mr. De Falla: Your Honor, we are following this line of questioning because one of the sources we have alleged of this particular Order to Show Cause is that there is bias on the part of the moving party, which has been the pressure having been directed through the Trustee, and I think if we [123] can show——

The Referee: How would the services of Mr. Granger in attempting to reconcile the differences between Mr. Hudson and Mr. Reeve prove bias, or in fact prove whether this corporation wasn't in truth and in fact the alter ego for the bankrupt as claimed?

Mr. De Falla: There will be allegations and testimony to the effect that there was a threat made that if these matters were not settled that the affair would end up in the Bankruptcy Court, your Honor. That is the sum and substance of our allegation, and if we can prove and show any material facts——

The Referee: Those questions were permitted at great length when Mr. Minton was on the stand, because it might show bias and prejudice insofar as his testimony is concerned, but you are propounding these questions to Mr. Granger.

Mr. De Falla: This is in the form of — Mr. Granger is our witness and this is in the form of refuting the testimony of Mr. Minton. There is no way of refuting it other than having the other party present testify.

The Referee: The objection is sustained.

In other words, the Court is not restricting you

(Testimony of Merrill E. Granger.)

from asking this witness as to any statement that Mr. Minton or Mr. Reeve made while in his presence. The objection is to the form of the question as you have put it, which goes on to ask for a conclusion of this witness. [124]

Mr. De Falla: I will rephrase the question.

Q. Did you have a meeting with Mr. Carl Minton, Sr. in his office? A. Yes, I did.

Q. Were there any statements made by Mr. Minton to the effect that if the matter was not settled amicably that the matter would end up in the Bankruptcy Court? A. On two occasions.

Q. As nearly as possible can you identify that time?

A. I would say late in 1954 and in the summer of 1955.

Q. When Mr. Minton spoke of settling the question amicably did he specify the particular problem?

A. The particular what?

Q. The problem that was to be settled amicably?

A. Yes. There were several problems discussed.

Mr. Bartley: Just a minute, Your Honor, I will object to that as being irrelevant. The problems to be settled are irrelevant. The major question is whether there were any statements that it might end up in bankruptcy. To go into minute detail as to the various things that might have been discussed, your Honor, leads us far astray from the major issues of this case.

The Referee: Your objection is sustained.

(Testimony of Merrill L. Granger.)

Mr. De Falla: There will be no further questions, your Honor.

The Referee: Do you wish to cross examine, Mr. Bartley? [125] It is now 20 minutes after 4, and unless you think you can conclude with this witness in the next 10 minutes or so——

Mr. Bartley: I doubt that I can conclude in 10 minutes.

The Referee: All right. As far as producing Mrs. Hudson, it shouldn't be necessary to subpoena her, should it?

Mr. Bartley: No, your Honor. I was going to ask counsel if he will stipulate that Mrs. Hudson will be present at the next hearing.

The Referee: You may step down from the witness stand.

Mr. Granger: I will do that conditionally, in that Mrs. Hudson has had a very severe operation very recently, requiring blood transfusions.

However, if her physical condition permits, I assure you she will be here.

The Referee: How about Mr. Bloom? How long will it take you to subpoena him?

Mr. Bartley: I talked to him several times on the telephone. I can get Mr. Bloom on two days' notice, your Honor.

The Referee: The Court is very anxious to bring this matter to a conclusion. Is there any reason why you can't have them here in court tomorrow morning at 10 o'clock?

Mr. Bartley: Yes. I doubt that the Marshal can

serve the subpoena. There is a possibility that it might not be served by 10 A.M. in the morning. I believe that 24 hours will be necessary in order to be certain that we get service. [126]

The Referee: Very well, the matter is continued to Thursday, September 22, at 10 A.M., which will enable you to serve a subpoena on both Mrs. Hudson and Mr. Bloom, if necessary.

Mr. Bartley: Yes, your Honor.

The Referee: Obviously, you should contact Mr. Granger to see whether a subpoena of her will be necessary.

Mr. Bartley: Yes.

The Referee: She should not be needlessly served.

All witnesses are ordered to return on Thursday, September 22, 1955, at 10 A.M., without further notice.

The Court expects you to conclude this matter on Thursday.

Mr. Bartley: Yes, your Honor.

(Whereupon an adjournment was taken until Thursday, September 22, 1955, at 10 o'clock A.M.). [127]

Thursday, September 22, 1955. 10 A.M.

The Referee: We will now proceed with the matter of John Lucas Hudson, Sr.

Mr. De Falla: I believe Mr. Granger was on the stand last and I had terminated my questioning, but if it please the Court, rather than put him on redirect examination, if I may ask him several ques-

tions so that there need be no redirect or cross examination on the redirect.

The Referee: You may have Mr. Granger resume the stand.

Mr. Bartley: Prior to the questioning of Mr. Granger, I would like to file with the Court two returns on subpoenas, one to Philip Bloom and one to Blanche V. Hudson.

Mr. Granger: If it please the Court, at this time I would like to file with the Court the affidavit of Dr. Lucas with reference to Mrs. Hudson's condition, and state to the Court that Mrs. Hudson had told me she would be quite willing to testify when she is physically able to do so.

The Referee: Mr. Bartley, do you feel it necessary to the proper presentation of your case to have the testimony of Blanche V. Hudson, or do you feel that you can proceed without her testimony?

Mr. Bartley: I believe we can proceed without the testimony of Mrs. Hudson.

I feel her testimony would only be largely repetitious of the testimony that has already been presented as to her [128] position in this matter, your Honor.

The Referee: Very well. Under the circumstances, we will proceed.

Mr. Granger: If the Court please, before I take the stand as a witness I would like to offer evidence of the fact that approximately four months ago it was Mr. Minton, who was a witness on the stand here——

The Referee: If you have any evidence to offer, proceed to offer it and I will rule on it as it comes in.

Mr. Granger: May I put it another way——

Mr. Bartley: To save time in this proceeding, or for whatever purpose it has in the proceeding, the Trustee will stipulate that approximately four months ago the matter came to the Trustee's attention through information furnished by Mr. Minton, the attorney for Mr. Reeve; that the first knowledge that the Trustee had of this matter was approximately four months ago.

I believe that is the testimony that Mr. Granger is referring to.

Mr. Granger: The respondents will accept that stipulation and Mr. Wylie, as far as we are concerned, can be excused.

The Referee: In other words, as the Court understands the matter, the first information relative to the Commodity Credit Corporation transaction came to the knowledge of the Trustee about four months ago through Carl W. Minton, attorney [129] for Mr. Reeve.

Mr. Granger: I understand that to be the stipulation.

The Referee: Proceed, gentlemen.

Mr. Granger: At this time, for reasons heretofore advanced, each of the respondents protests further procedure in this summary proceeding on the issues presented, and asks that the order be discharged and each of them be released on the addi-

tional ground that the evidence offered by the Trustee to this point clearly establishes that the funds and the rights in issue were earned by the bankrupt subject to his adjudication.

Mr. Bartley: May it please the Court, on the contrary the evidence clearly establishes that the major portion of this income was earned prior to the filing of the petition in bankruptcy.

The testimony has been very clear that the man went to Washington, furnished drawings and negotiated for bids, and that the bids were accepted on the very day of the filing of the petition, and I see no basis whatsoever for any discharge of this order. On the contrary, I believe that the evidence is very clear to the contrary.

The Referee: The motion is denied on both grounds, and the attention of counsel is called to Subsection 7 of Subdivision A of Section 2 of the Bankruptcy Act, and also to the case of Sampsell vs. Imperial Paper Company. I don't recall the volume and page, but that case is a decision by [130] the United States Court of Appeals for the Ninth Circuit.

Mr. Granger: Could I have again the Court's reference to the section of the Bankruptcy Act? I am not sure that I got those down in the order that the Court named them.

The Referee: Subsection 7 of Subdivision A of Section 2 of the Bankruptcy Act.

Mr. Granger: Thank you.

MERRILL L. GRANGER

recalled, testified further as follows:

Further Direct Examination

Q. (By Mr. De Falla): Mr. Granger, will you tell us of the conversations which you had with Mr. Minton in his office on the two occasions that you have previously identified?

A. It would be late in the year 1954 I had a conversation with Mr. Minton in his office in which the subject of settlement of the issues between Lloyd R. Reeve, Incorporated and the Pacific Palmdale Development Company was discussed.

Mr. Bartley: I am going to object to this question as irrelevant, and move that any answer be stricken, as it is late in the year 1954, relating to an independent lawsuit, and in no way relating to the issues of this case.

Mr. De Falla: Again, your Honor, I will have to reiterate that the bases for the charge in the Order to Show Cause is one where the attorney for Mr. Reeve took it upon himself to volunteer information to the Trustee. [131]

We are going to show, and have tried to show, bias, and I think that the gravamen of the question is this conversation led up to this matter directly and has a distinct bearing on the motives of the parties.

The Referee: Objection sustained.

Q. (By Mr. De Falla): Were there any further conversations, Mr. Granger?

A. I had a conversation on that subject matter

(Testimony of Merrill L. Granger.)

in the summer of 1955, and I had a telephone conversation with Mr. Minton, I would say, in the summer of 1955 regarding——

Q. Was that on the same subject as the two prior? A. Yes.

Q. Will you relate that conversation?

Mr. Bartley: I will make the same objection as I made to the prior question.

This is more than one year subsequent to the transactions which are placed before the Court, and also subsequent to the initiation of action by the Trustee in the matter, and I fail to see how they are in any way relevant to the issues before this Court, which is a matter between the Trustee and the Bankrupt.

The Referee: The objection is sustained.

Q. (By Mr. De Falla): Mr. Granger, when did you undertake to represent Mr. Hudson in his bankruptcy proceeding?

A. There was some discussion of bankruptcy prior to the work itself, which was undertaken, I think, probably the [132] 10th or 11th of April, or right after Mr. Hudson's return from Washington in 1954.

Q. In these discussions did you apprise Mr. Hudson of the legal nature of his relationships with his creditors? A. I did.

Q. What did you advise him?

A. Well, the advice was given somewhat in——

The Referee: What date is this conversation, gentlemen?

(Testimony of Merrill L. Granger.)

Mr. De Falla: As I recall it, your Honor, it was the conversations regarding the bankruptcy, and it took place in approximately April; April 10th, or thereabouts.

The Referee: April 10, 1954?

Mr. De Falla: Yes.

The Referee: Very well. Proceed.

Q. (By Mr. De Falla): After Mr. Hudson came back from Washington——

A. I did give him advice in connection with his relation to creditors at that time, but it was after an affirmation, reaffirming of advice that I had earlier given him, probably very early in the year.

Q. What was that advice you speak of, Mr. Granger?

A. That if he would undertake from his earnings, substantial earnings, to build some fund to use in financing his independent operations before he obtained a release from his creditors, or before he obtained a discharge in bankruptcy, [133] the accumulation that he would make would be subject to their demands. That was reiterated to Mr. Hudson on occasion.

Q. I believe you testified, Mr. Granger, that you were the party who incorporated Pacific Palmdale Development Company. Is that correct?

A. I did.

The Referee: I believe the Articles of Incorporation of Pacific Palmdale Development Company were filed with the Secretary of State April 6, 1954, were they not?

(Testimony of Merrill L. Granger.)

Mr. De Falla: Yes, your Honor.

Mr. Bartley: That is correct, your Honor.

Q. (By Mr. De Falla): I show you a document entitled "Articles of Incorporation of Pacific Palmdale Development Company." Do you know that document, Mr. Granger? A. I do.

Q. What is it?

A. It is a copy of the Articles of Incorporation of Pacific Palmdale Development Company, except as to what purports to be the signatures on the original. They were the signatures of the persons that they purport to be, and on this document they are typewritten copies.

Mr. De Falla: I would like to submit this copy of the Articles as Respondents' Exhibit next in order.

The Referee: The Clerk has not as yet brought in the exhibit file. Do you know what the Respondents' next exhibit number will be? [134]

The copy of the Articles of Incorporation of Pacific Palmdale Development Company will be received in evidence on behalf of the Respondents, and as soon as the Clerk brings in the exhibit file it will be given a designation.

Mr. De Falla: May I proceed, your Honor?

The Referee: You may.

Q. (By Mr. De Falla): Mr. Granger, at all times that you were dealing with Mr. Hudson in regard to Pacific Palmdale Development Company, were you acting in a professional capacity as his attorney?

(Testimony of Merrill L. Granger.)

Mr. Bartley: Object to that question as calling for the conclusion of the witness.

The witness may testify as to facts and method in which he operated, but it calls for a conclusion as to whether he was the attorney or a corporate officer. I believe that calls for a conclusion.

The Referee: Your objection is sustained.

Q. (By Mr. De Falla): Were you at all times during the incorporation of this matter, Mr. Granger, active in its organization and in its business to the extent that you knew every detail?

Mr. Bartley: Object to that as calling for a conclusion.

The Referee: Sustained.

Q. (By Mr. De Falla): Briefly then, Mr. Granger, would you tell us the preliminary steps and the actual steps taken [135] to bring this corporation into being?

The Referee: This matter has been gone into before, gentlemen.

Mr. Bartley: Yes, your Honor, the matter has been covered at some length. If there are any specific facts which counsel wishes to elicit——

The Referee: Unless there is something, Mr. De Falla, that you have not covered in your previous examination of this witness, the objection to the question as having been asked and answered will be sustained.

Mr. De Falla: I have no further questions, your Honor.

Mr. Bartley: May it please the Court, Mr. Gran-

(Testimony of Merrill L. Granger.)

ger must of necessity in his professional capacity remain in the courtroom during the remainder of this proceeding. I have another witness waiting, that we have gone to some effort to have in the courtroom, and I would like at this time to request permission to call that witness out of order, and calling the Court's attention to the fact that the witness is Mr. Philip Bloom, who was concerned in some manner or means with the organization of this corporation.

It has been most difficult to secure his attendance in court, and examination of this witness, I believe, will show that during the attempt to secure the testimony of this witness that he has been directly contacted by the bankrupt, and I therefore wish to call him as an adverse witness. He has been definitely contacted; he has been definitely talked [136] to, and he has been somewhat recalcitrant to appear in court, and under those circumstances we hesitate to bind ourselves to a position where we cannot impeach this man's testimony.

The Referee: Do you have any further questions of Mr. Granger?

Mr. Bartley: Yes, I do have some questions of Mr. Granger that will go to some length.

The Referee: Mr. Granger, you will be permitted to step down from the witness stand, and you will be permitted, Mr. Bartley, to call Mr. Philip Bloom out of order.

Mr. Bartley: The Trustee will call Mr. Philip Bloom as an adverse witness.

The Referee: Please come forward, Mr. Bloom.

PHILIP BLOOM

called as a witness, being first duly sworn, testified as follows:

The Referee: Please be seated and state your full name.

The Witness: Philip Bloom.

Direct Examination

Q. (By Mr. Bartley): What is your address, Mr. Bloom? A. Home or business?

Q. Both.

A. My home address would be 135 North Canyon View Drive, Brentwood.

My business address is 4264 Overland Avenue, Culver [137] City.

Q. What is your occupation, Mr. Bloom?

A. I am the owner of a construction company.

Q. Mr. Bloom, have you been contacted by the bankrupt within the last two weeks?

A. I contacted the bankrupt.

Q. When was the last time that you had any conversation or met with the bankrupt?

A. I believe it was either Tuesday or Wednesday evening when I stopped by Mr. Hudson's house.

Q. Tuesday or Wednesday evening of this last week or this week? A. Of this week.

Q. How intimately are you acquainted with the bankrupt?

A. Well, enough that we were anticipating doing some business together.

Q. How long have you known the bankrupt?

A. I would say—I went to school with his son.

(Testimony of Philip Bloom.)

The Referee: Before we proceed, the Clerk has brought in the exhibit file, and the copy of the Articles of Incorporation of Pacific Palmdale Development Company will be marked as Respondents' Exhibit I.

Q. (By Mr. Bartley): Approximately how long ago was this?

A. What was the question?

Q. I asked you how you were connected or how you first met the bankrupt, and you said you went to school with his [138] son. I asked you approximately how long ago was this?

A. I would say approximately 10 or 11 years ago.

I had, however, never met Mr. Hudson, the son's father.

I met Mr. Hudson, I think, for the first time about five years ago.

Q. Mr. Bloom, approximately when did you receive any information or have any dealings with the bankrupt in relation to a housing deal or development in Palmdale, California?

A. I would say about two or three months before an application went in to get a land approval on a piece of land in Palmdale.

Q. Do you know approximately when that application for land approval went in?

A. I think I turned over some documents to John—I think that was one of them. It is almost impossible for me to place the time right now.

Q. Was that during 1953 or was it late in 1954?

A. 1954.

(Testimony of Philip Bloom.)

Q. Was it in late or early 1954?

A. I would say it was around February.

Q. Of 1954? A. I think so, yes.

Q. Did you have any meetings with Mr. Hudson as regards this Palmdale development?

A. I had meetings, yes, with Mr. Hudson, that is right.

Q. Approximately how many times did you meet with [139] Mr. Hudson as regards this transaction?

A. Is this with Mr. Hudson alone?

Q. Mr. Hudson or Mr. Granger?

A. Well, Mr. Granger — I would say literally dozens of meetings we had.

Q. To the best of your ability will you name the approximate dates of the meetings and the conversations which took place as regards this development, and in particular how it related to the method of financing?

A. I can give you a story of how I actually ran into it, if it will be of any help.

Q. If you feel it will, give it to us to the best of your ability.

A. I had known John, and John was in the construction business, and I had heard that he had gotten into—at that time I believe it was into some difficulty over a contract, or something was wrong.

I passed his house one night and I thought I would drop in just casually and see what the difficulty was.

I sat down. I was talking to his wife, and his wife gave me just a brief story that John — something went wrong with the contract or something he was

(Testimony of Philip Bloom.)

doing, and then she said that Mr. Granger was very, very interested in land and development in Palmdale. He considered it a very hot spot.

I was in the construction business, so I immediately got interested. [140]

Then John was there, and I talked to him a little while, and he told me that Mr. Granger had this big interest, so I think shortly thereafter in my automobile we all took a trip to Palmdale just to see what was happening: Mr. Granger, myself and another party, who we expected to be our money lender.

We went out there, and we just took a general look over the area. Thereafter I think we looked at several different pieces of property, and finally we stumbled onto one that was very interesting, and we got the terms from a broker down there. I would say from that time on we had a great many conversations; they were here and they were there, and it was a consistent, you might say, an association involving Mr. Granger, and Mr. Hudson was present most of the time.

Q. Mr. Bloom, during the course of these conversations was there any discussions as regards the formation of a corporation?

A. Yes, absolutely. We wanted a corporation.

Q. Approximately when was the first discussion regarding a corporation?

A. At the time that we had located this land belonging to a Mr. Thornburg in Palmdale.

Q. Approximately what date?

A. If you can give me the date of that applica-

(Testimony of Philip Bloom.)

tion I can work it from there, but I cannot say offhand what date.

The Referee: What is your best recollection?

The Witness: I would say possibly anywhere—January or February, I would say around there.

Q. (By Mr. Bartley): of 1954?

A. Of 1954.

Q. All right: continue.

A. Well, where was I?

Q. What were the discussions about the formation of a corporation?

A. Oh, yes. Well, I have a company now that is a corporation. I also have another company that is a corporation.

The Referee: The question is what conversation or discussion did you have relative to incorporating, not what corporations you have, but incorporating this particular venture.

Where was the conversation about incorporating?

The Witness: Where did it take place?

The Referee: Yes.

The Witness: I am sorry, I can't answer where it first took place.

The Referee: Who was present when it was discussed?

The Witness: Mr. Granger, myself and Mr. Hudson.

The Referee: Anyone else that you recall?

The Witness: I would say in the making of the corporation for Pacific Palmdale——

The Referee: Just a minute. Was there anyone

(Testimony of Philip Bloom.)

else present besides those you mentioned that you can recall? [142]

The Witness: I know that several discussions we had were at Mr. Hudson's house, and if that would have been the case Mrs. Hudson would have been there.

The Referee: Was that the first conference that you had relative to incorporating this venture?

The Witness: I am sorry, your Honor, I can't put my finger on it.

The Referee: Very well. What was said at that time?

The Witness: I wish you could be more specific.

The Referee: Mr. Bloom, you have stated that you had a meeting at which the incorporation of this proposed enterprise was discussed. Will you state to the Court what was said and by whom relative to incorporating this company?

This is the first conversation relating to incorporating the company in connection with this project.

The Witness: I think Mr. Granger said, when I became very interested in the project, that we should form a corporation and—I don't see how I can tell you.

Q. (By Mr. Bartley): Mr. Bloom, to attempt to get more specific, in this discussion that you had was there any discussion as to the position Mr. Hudson would have in the corporation or in the venture?

A. Yes.

Q. What was that discussion?

A. I can't give you the exact discussion, but I

(Testimony of Philip Bloom.)

can give you the feelings that I had from the whole situation. [143]

Q. Just as nearly as you can recall.

A. All right. Mr. Hudson was to be an employee, and as I understood in the dealings that transpired through the time I worked with Mr. Hudson, but at all times, as far as I knew, he was representing other interests.

The Referee: What other interests did he tell you he was representing?

The Witness: It wasn't too definite. Definitely Mr. Granger's. I think he mentioned his son Bill Hudson. He mentioned his wife.

The Referee: Did he tell you that Mr. Granger was his attorney?

The Witness: Yes, I knew that.

The Referee: You knew that?

The Witness: Yes.

Q. (By Mr. Bartley): Was there any discussion as to why he should be in the status of an employee in this transaction?

A. Well, I believe because he was in bankruptcy that he couldn't go into a business for himself.

Q. Was there discussion regarding that particular point?

A. No, I didn't delve into that; I was only concerned with my interest.

Q. Was there any discussion as to why he should be an employee in this transaction?-[144]

A. I would say no discussion with me.

(Testimony of Philip Bloom.)

Q. Did you hear any discussion regarding why he should be an employee?

Mr. Granger: Object to that as incompetent, irrelevant and immaterial until it appears who might have made the statements in the discussion.

Mr. Bartley: I first have to establish that he heard something before I can ask who were the participants.

The Referee: The objection is overruled.

Q. (By Mr. Bartley): Think hard, Mr. Bloom, this is a very important point.

A. I am thinking hard. I remember something about John telling me that he wasn't in a position to go into any ventures. I believe that he told me that you might say, things were in such a situation that he had to take a job in San Diego, which I think he did, and that he was in no position to do certain things because he had a bankruptcy pending, and that he was trying to do everything in his power not to have to take a bankruptcy. I think that was it.

Q. Was there any specific discussion either that you had with the bankrupt or that you overheard between the bankrupt and someone else regarding why he would assume the status of an employee in this venture, which you have stated he apparently negotiated?

A. I would say outside of that opinion or that feeling that I got—the situation was that Mr. Granger was going to [145] bind him on a point or something, and then ask him if he was willing to work for someone who could get together some kind of a deal.

(Testimony of Philip Bloom.)

Q. Did the bankrupt ever discuss his financial condition with you?

A. The bankrupt?

Q. Yes.

The Referee: Mr. John Lucas Hudson, Sr.

The Witness: He had no money, that is all I know about John.

The Referee: Mr. Bloom, before you answer a question will you please pay attention to the question.

The question is did he ever discuss his financial condition with you. Now you may answer yes or no and then you may explain your answer if you wish.

The Witness: I would say——

The Referee: Mr. Bloom, surely you know whether or not Mr. Hudson did or didn't discuss his financial condition with you, don't you?

The Witness: Yes.

The Referee: Very well. When did he discuss his financial condition first with you? You may give us the approximate time.

The Witness: I would say that night that I stopped by to see him when our interests in Palmdale first originated.

The Referee: When was that, approximately?

The Witness: I think I said around January or February.

The Referee: 1954?

The Witness: 1954.

The Referee: What did he state to you at that time with regard to his financial condition? Give us

(Testimony of Philip Bloom.)

the substance of what he said to you, and not your conclusions.

The Witness: I think at that time he said that the creditors had taken over his business and that things were pretty sour on a contract that he had, and I would say that is about the extent of it.

Q. (By Mr. Bartley): Did you have any conversations with Mr. Hudson, Sr. regarding his financial condition during the early part of 1954?

A. No, I don't believe so.

Q. Did you have any discussion whatever with Mr. Granger regarding the financial condition of Mr. Hudson?

Mr. Granger: I object to that as incompetent, irrelevant and immaterial, and calling for perhaps hearsay testimony, unless Mr. Granger's agency for Mr. Hudson is established as of the time the conversation took place.

Mr. Bartley: We will establish the time after we find out if these were any conversations.

The Referee: Your objection is overruled.

Will you read the question?

(Question read.)

The Referee: That again should be answered yes or no, [147] and then, if you wish, you may explain your answer.

The question now is did you of did you not have any such discussions.

The Witness: I would say yes.

Q. (By Mr. Bartley): Approximately when did you have any such discussions?

Testimony of Philip Bloom.)

A. I would say possibly during the same period of January, February, possibly March.

Q. Approximately how many discussions did you have on this subject?

A. I would say not over one.

Q. What was said during this discussion?

A. I would say the same thing that Mr. Hudson told me.

The Referee: Repeat in substance that which Mr. Granger told you on that occasion.

The Witness: That John had gotten into difficulty with this contract, and that things didn't look good, and that was about it.

Q. (By Mr. Bartley): Was there any discussion again as relating to the position that Mr. Hudson was to take in this venture, this corporation that you were going into, relating it to his financial condition?

A. No. I would say that there weren't that related to his financial condition.

Q. Mr. Bloom, did you sign the Articles of Incorporation of the Pacific Palmdale Development Company? [148]

A. I think so.

Q. Do you recall when those Articles were signed, approximately?

May I see Respondents' Exhibit 1, your Honor?

For purposes of refreshing your recollection, Mr. Bloom, I show you what purports to be the Articles of Incorporation. Is that the day that you signed them? A. I would say yes.

(Testimony of Philip Bloom.)

Q. Mr. Bloom, subsequent to the signing of these Articles of Incorporation did you have any change of heart as to the position you were going to take in this venture? A. Yes.

Q. Approximately when did you have a change of heart, to the best of your recollection, the date?

A. I would say that is a fluid situation. I would like to explain it a little bit.

We went to Palmdale and we got this particular man's property approved through this application to the Veterans Administration.

The Referee: That is the property of Mr. Thornburg?

The Witness: The property of Mr. Thornburg. We were going to use Pacific Palmdale Development Company as a corporation, and then we needed a backer, so we verbally worked out a plan with Mr. Thornburg that he would subordinate his property, and that he subordinate his property——

Q. (By Mr. Bartley): By "we," whom do you mean? [149]

A. Mr. Granger, Mr. Hudson and myself. I would say that was it, and a principal backer that we had to find.

Q. Continue.

A. So we found this property. We got the VA approval on it, and when we had contacted a principal interest in the East, I think a man named Mr. Schwartz, and also a man out here named Mr. Hutchinson, they were interested in the deal, and I be-

(Testimony of Philip Bloom.)

lieve at that time we were going to give away about 50 per cent of the profits to our backer.

However, Mr. Thornburg turned around and surprised us and said that he would back us and put up the land and take only 30 per cent of the deal.

He said that we would use his corporation, Thornburg Manor, Inc. So at that time, as far as I was concerned, I was interested in transferring my interest from Pacific Palmdale Development Company to this Thornburg Manor, Inc., because it was our backer's corporation, and you might say the same situation existed with his corporation.

Q. Approximately when did you get this information?

A. I think I got the feeling, or I got a definite—I got more of a feeling there was no sense of working with Pacific Palmdale any more. I think it was around when I gave in my resignation, which was the 12th.

Q. The 12th of April?

A. Yes. By the way, I think you asked me to bring the document. [150]

Q. We have already introduced that document in evidence. A. All right.

There was a great deal of verbal discussion with Mr. Thornburg, and it was such a fluid situation that there was nothing definite. However, we did have our principal with his own corporation, and there was no reason for my holding onto Pacific Palmdale.

Q. Did you have any discussion with either Mr.

(Testimony of Philip Bloom.)

Granger or Mr. Hudson regarding this Thornburg Manor corporation, or whatever the name is?

A. Yes.

Q. Approximately when did those conversations occur? A. I would say——

Q. Was it prior to April 3, 1954?

A. I would say it would be close in that area.

Q. Did you in any manner signify to Mr. Hudson or to Mr. Granger that you considered that the Pacific Palmdale matter should be held in abeyance?

A. Yes. I said that when I gave my resignation, that I had it in mind that Pacific Palmdale would be in abeyance, and it would be subject, you might say, to the proper transfer of my interest to this other corporation.

Q. Did you discuss that matter with Mr. Granger or with Mr. Hudson during the early part of April, prior to or on or about April 3, 1954? [151]

A. I would say yes.

Q. Approximately what was done and said at that time?

To refresh your memory, Mr. Bloom, isn't it a fact that you told Mr. Minton during a telephone conversation of approximately one week ago that more than two weeks prior to the date that the Articles of Incorporation were filed you had signified to Mr. Granger and to Mr. Hudson that you were not willing that the Articles be filed?

A. No, that is not right.

Q. All right. When was it that you had this discussion that the Articles should be held in abeyance?

(Testimony of Philip Bloom.)

You have stated that it was prior to, or on or about April 3, 1951.

A. I would say it was right in around the 12th when I gave my resignation. I would say up to that time I didn't know. There was very little definite as to transferring it to Thornburg Manor, Inc.

I was all in favor of the Pacific Palisdale Development Company.

Q. Isn't it a fact, Mr. Bloom, that you and Mr. Granger, or you and Mr. Hudson discussed the feasibility of whether or not to file the Articles of Incorporation pending these negotiations with Mr. Thornburg prior to the time that you submitted your resignation?

A. I don't recall anything like that.

Q. Did you have any discussions as regards this Thornburg Manor affair in which Mr. Hudson participated? [152] A. Yes.

Q. Approximately when did these occur?

Mr. Hudson was in Washington during the period of the 12th, Mr. Bloom. I am merely trying to get the date.

Mr. Granger: I will object to counsel's statement. It doesn't appear that Mr. Hudson was in Washington on the 12th of April. The testimony is that he was in Washington on the 9th of April.

Mr. Bartley: I will strike that statement.

The Referee: The statement may be withdrawn and the objection is sustained.

Q. (By Mr. Bartley): Mr. Bloom, when did you

(Testimony of Philip Bloom.)

first find out that the Articles of Incorporation had been filed? A. I don't know.

Q. Approximately when?

A. Well, if I signed the application I would assume they were filed shortly thereafter.

Q. Did anybody tell you that they had been filed?

A. No. I think I assumed it would be done.

Q. Did you know whether or not they had been filed prior to this letter that you sent resigning?

A. I expected them to be, if they weren't.

Mr. Bartley: Your Honor, may I have Respondents' Exhibit E?

Q. Do you have a copy of this with you?

A. Yes. [153]

The Referee: May I see the copy which you have, so that the Court may examine it and compare it with the Court's copy?

Q. (By Mr. Bartley): Mr. Bloom, I call your attention to this Respondents' Exhibit E, your language on the second line of that document. It states, "At no time did I take an active part in said company, with the exception of a one time proposed stockholder."

When you state "with the exception of a one time proposed stockholder," to what period does that one time relate? Obviously it is a period before this April 12th letter, is it not? A. Yes.

Mr. Granger: I move to strike counsel's conclusion from the document as to what is obvious from it.

(Testimony of Philip Bloom.)

The Referee: Your objection to the question will be sustained.

Q. (By Mr. Bartley): Mr. Bloom, to what period of time do you refer when you use the language "a one time proposed stockholder" in that Respondents' Exhibit E?

A. I refer, I guess, to the very onset of the formation of the corporation.

Q. Was this document the first notice or the first discussion you had with either Mr. Granger or Mr. Hudson as to your desire to withdraw from the venture?

A. I would say no. I think I talked about it probably—— [154]

Q. Approximately when? How long was it before that letter?

A. I don't know. I am sorry, I don't know.

Q. About how long was it, a week, several weeks, several days?

A. I couldn't answer that.

Q. Was it as long as a month prior to that letter?

A. I don't believe so.

Mr. Granger: Just a minute. I object to the question as having been asked and answered. The witness said he didn't know.

The Referee: The objection is overruled.

Q. (By Mr. Bartley): Was it as long as a week prior to that letter?

A. If you want me to guess, I can guess.

The Referee: What is your best recollection?

The Witness: I have no recollection of it. It is

(Testimony of Philip Bloom.)

one of those things that just developed slowly as Mr. Thornburg's corporation strengthened.

Q. (By Mr. Bartley): Was it a short period, one or two days, before you sent that letter, or was it a longer period than just prior to the time you sent that letter?

A. I would say it was just several days before.

Q. Would you say it was as long as a week before that letter?

A. I would say it was within a week. [155]

Q. Within a week of that letter? A. Yes.

The Referee: Who prepared that letter?

The Witness: I did. I just typed it very rapidly.

The Referee: When did you type it up?

The Witness: I think I typed it up — I didn't date it, because——

The Referee: The question is rather simple. When did you type up Respondents' Exhibit, E, of which you hold a copy before you?

The Witness: I will make a guess. I would say the day before.

The Referee: What date is that you are referring to?

The Witness: I would say the 11th, possibly the 10th.

The Referee: Why didn't you date it?

The Witness: Because I didn't know when I would get an opportunity to see these people to have them accept this, so I thought I would just leave the date open and fill it in at the time it was signed.

The Referee: You say your guess is that you

(Testimony of Philip Bloom.)

drew it up the day before April 12, 1954. Could you have drawn it up as much as a month before April 12, 1954?

The Witness: I would say no.

The Referee: Could you have drawn it up as much as two weeks before April 12, 1954?

The Witness: I don't believe I did it over a week [156] before. I think, if I can recollect properly, I think I carried it around for one or two days.

The Referee: Proceed, counsel.

Q. (By Mr. Barthey): Mr. Bloom, you have heretofore testified that you met with the bankrupt, Mr. Hudson, on Tuesday or Wednesday of this week? A. Yes.

Q. Where did that meeting occur?

A. At his house.

Q. At that meeting was there any discussion as regards this proceeding?

A. No. I think there was more discussion about what is it all about, and then I got a brief story of what had transpired, and so forth.

Q. Specifically what did the bankrupt tell you as regards this proceeding as to what it was all about?

A. He told me that the Receivers were trying to attach moneys and establish that Mr. Hudson was in actuality doing business as himself in a corporative form, and we talked about many phases and many other things.

Q. Did you discuss the possibility that you might testify?

A. Oh, yes, I told him that I was going to.

(Testimony of Philip Bloom.)

You had called me, and I wanted to know what it was about.

Q. Did the bankrupt make any request as to what you [157] should testify to? A. No, sir.

Q. Did he make any request as to how you should testify? A. No, sir.

Q. Mr. Bloom, have you ever at any time had any interest in a grain transaction affair between Pacific Palmdale Development Company and Lloyd R. Reeve, Incorporated? A. None whatsoever.

Q. Did you ever at any time notify the bankrupt or Mr. Granger that you had no interest in that venture?

I will strike that question and reword it.

Did you ever have any discussion with Mr. Granger or with Mr. Hudson as regards that venture?

A. Yes. I knew—let's see, I think once I had a desire to get involved in it.

Q. Did you have any discussion with the bankrupt? A. No.

Q. Did you have any discussion with Mr. Granger as regards this affair?

A. No. I said no.

Q. Was it ever called to your attention in April of 1954, any time during that month, or anytime prior to that?

A. Yes. There was something, I think, brewing at tha particular time, I think.

Q. Who called it to your attention, Mr. Bloom?

A. I can't recall.

(Testimony of Philip Bloom.)

Q. Approximately when was it called to your attention?

A. It seems to have been prior to the time that I resigned.

I have to do a little correcting here. It seems to me that I did hear about the grain bin deal, and I was interested in attempting to get into it, but then the interest diverted to that Thornburg, and I got more enthused about that situation, so I released my interest in Pacific Palmdale.

Mr. Bartley: No further questions, your Honor.

Cross Examination

Q. (By Mr. Granger): In these early conversations that you had with Mr. Granger and with Mr. Hudson in which Mr. Hudson referred to Mr. Granger as his attorney——

The Referee: May I interrupt? After you finish your question I want the reporter to repeat something. Finish your question.

Q. (By Mr. Granger): (Continuing) ——was there anything said by Mr. Hudson with reference to particular matters in which Mr. Granger represented him as attorney?

The Referee: Mr. Reporter, will you be good enough to read the last question and answer which Mr. Bartley asked and the witness answered?

(Question and answer read.)

The Witness: Could you simplify that question?

Mr. Granger: I will try to.

The Referee: It might also be of help to the

(Testimony of Philip Bloom.)

Court, because, frankly, the Court doesn't understand the question either.

Q. (By Mr. Granger): Mr. Bloom, you have testified that Mr. Hudson on occasions referred to Mr. Granger as his attorney.

In any such reference did Mr. Hudson undertake to explain to you or state in that connection in what manner Mr. Granger was then representing him as attorney?

A. Mr. Granger, I hate to ask you this, but I still can't quite get the import of that question.

Q. Was reference made to any particular circumstance under which Mr. Granger was representing Mr. Hudson as attorney?

A. At what period?

Q. At any time that Mr. Hudson referred to Mr. Granger as his attorney?

A. And you mean ask what position did you take?

Q. Yes.

A. That you were an interest holder in the corporation.

Q. I mean, Mr. Bloom, was there any situation described or referred to by Mr. Hudson, or any situation in which he referred to Mr. Granger as representing him as his attorney?

A. In the bankruptcy, I believe. [160]

Q. Was there any other than that that you know of?

A. The formation of the corporation.

Q. Did I tell you that I was acting as his at-

(Testimony of Philip Bloom.)

torney in that respect? I want your memory of any conversation as well as you can recall it, Mr. Bloom.

A. I would say that your interest in Pacific Palmdale was more of a business.

The Referee: Not what you understood his interest was, but what did he tell you, if anything?

The Witness: Mr. Granger told he his interests were that he was primarily interested in the business aspect of Pacific Palmdale.

The Referee: Mr. Granger told you that?

The Witness: I want to say that I think those are certain things that I drew from it. I wouldn't want to say so.

Q. (By Mr. Granger): Mr. Bloom, did I tell you that I was representing Mr. Hudson in the bankruptcy matter? A. Yes.

Q. Did Mr. Hudson tell you that also?

A. I believe so, yes.

Q. Would you say that was before or after April 19, 1954? A. I would say before.

Q. Would you know how long before?

A. I would say substantially before that. [161]

Q. Can you name it in days?

A. No, I couldn't, Mr. Granger.

Q. Referring to bankruptcy as a proceeding, was there any other proceeding mentioned in which I might have been representing Mr. Hudson, or was said to be representing Mr. Hudson, as attorney?

A. Wasn't there an accident, I believe, at one time?

Q. A proceeding or an action?

(Testimony of Philip Bloom.)

A. In an accident didn't you represent the Hudson family, in an automobile accident?

Q. I did. I am sorry, I shouldn't answer you.

The Referee: Mr. Bloom, did Mr. Hudson tell you Mr. Granger was representing him in the formation of a corporation known as Pacific Palmdale Development Company?

The Witness: Would you say that again?

The Referee: Will you repeat the question?

(Question read.)

The Witness: No, not at all; on the contrary, Mr. Granger was the man that I believe——

The Referee: We are not interested on the contrary, we are interested in whether or not Mr. Hudson told you.

The Witness: I would say no.

Q. (By Mr. Granger): Mr. Bloom, your relationships with Pacific Palmdale-Thornburg venture have extended over a period of a year.

A. Yes. [162]

Q. Would you undertake to say how many conferences you had with Mr. Hudson or with Mr. Granger or with Mrs. Hudson with reference to either of those projects?

A. I would say that either one of them could have run into several dozens.

Q. How long would you say it has been since you have given any attention to the affairs of Pacific Palmdale Development Company or the Thornburg transaction?

A. I would say about seven or eight months.

(Testimony of Philip Bloom.)

Mr. Bartley: I am going to move that answer be stricken on the ground that this period is subsequent to April 12, 1954.

The Referee: It isn't necessary to argue the testimony. The Court has taken copious notes and has the testimony well in mind.

Q. (By Mr. Granger): Have you had any occasion in the last six months to refresh your memory as to the dates of any of those conversations you referred to, as to where they took place or the particular parties that were present there or what was said? A. I would say no.

Q. When there was any discussion at all between you and Mr. Hudson about his finances, was that gone into in detail? A. No.

Q. Did you know anything other than the general fact [163] that he had had difficulty, financial difficulty with his creditors?

A. No. I would say that is the extent of it.

Q. You have testified that your resignation from Pacific Palmdale was given on or about the 12th day of April, 1954. To whom was that given?

A. I gave that to Mrs. Hudson, who had a receipt for me at the time I gave it to her.

Q. Where was she when it was given to her?

A. Can I make a guess? It was at her house, at home.

Q. You have used the word "fluid" in connection with the conditions and the developments of Pacific Palmdale and Thornburg; your relations to it and the Thornburg project. A. Yes.

(Testimony of Philip Bloom.)

Q. What do you intend to convey by the use of that word, Mr. Bloom?

A. Well, just that if the land and the principals and everyone involved were going to use Pacific Palmdale then I would want my interest in Pacific Palmdale, but when Mr. Thornburg let it be known that he was willing to back us, then I was willing on the basis of taking the same interests and transferring it to Thornburg Manor, Inc. I was willing to release my interests in Pacific Palmdale.

Q. Did you reach that decision suddenly or did it extend over a period of time?

A. It extended over a period of time, and it operated [164] hot and cold for a long time, depending on how Mr. Thornburg's attitude was.

Q. In connection with the affairs of Pacific Palmdale Development Company did you know of a Mr. Don Peters?

A. Is that Don Teeters?

Q. Don Teeters, I should say.

A. Yes. He was a fellow that was going to take some bids on the plans that we had for this tract.

Q. Did you write letters on behalf of Pacific Palmdale Development Company in connection with such bids to subcontractors? A. Yes, many.

Q. I will call your attention to this document and ask you to examine it. I will ask you if it appears on your stationery? A. Yes.

Q. Did you write the original of which that purports to be a copy?

(Testimony of Philip Bloom.)

A. Yes, I think I wrote and sent that to him, and that is a copy; that is correct.

Q. When would that have been done with reference to the date it bears; April 25, 1954?

A. It would have been done that day, I would say.

Q. Did you sign that letter and then mail it to Mr. Teeters?

A. Absolutely, with a set of plans, marked, I think, [165] with "Pacific Palmdale Development Company."

Q. Except for a circle around April 25th in ink, and the ink that underscores some words there, is that a correct copy of the letter which you sent to Mr. Teeters? A. Yes.

Mr. Granger: That is offered in evidence as Respondents' next in order.

The Referee: The document will be received as Respondents' Exhibit J.

Q. (By Mr. Granger): When you state, Mr. Bloom, that you intended a withdrawal from Pacific Palmdale, and related it to a particular time, can you fix any definite date other than the date of your resignation? A. No.

Q. When you say that you had it in mind for any period of time before that, do you have any distinct recollection how long that was?

A. It would be difficult to be distinct.

Mr. Bartley: Just a minute. That question has been asked and answered several times.

The Referee: Objection sustained.

(Testimony of Philip Bloom.)

Mr. Granger: I think that is all.

Mr. Bartley: I have a few questions.

The Referee: Will counsel bear with the Court for a moment until he finishes reading Exhibit J? You may now proceed. [166]

Redirect Examination

Q. (By Mr. Bartley): Mr. Bloom, have you any way of determining the precise date that you delivered Respondents' Exhibit E, that is the letter of resignation, to Mrs. Hudson? A. Yes.

Q. What is that method of determining the date that it was delivered?

A. Well, I have written on my copy "4-12-54." It has "Have received original of this copy and will submit same for consideration at earliest opportunity. BVH." That is Mrs. Hudson.

Q. Are you reading from a document which you have in your hand?

A. Yes, with her handwriting.

Q. Were you present when that was signed?

A. Yes. If I am not mistaken, I believe I told her that I would like to let this be known—I don't especially care how this is acted on, but I would like a receipt that I had offered this resignation or termination, because I felt that——

Q. Pardon me. What that date placed on there in your hand or in the hand of Mrs. Hudson?

A. This right here with the date is all her writing.

(Testimony of Philip Bloom.)

This up here is my writing. The date is filled in on my copy. [167]

Q. Mr. Bloom, do you need this for your files?

A. Yes, I do.

Mr. Bartley: Will you stipulate that we can read the handwriting into the record rather than introduce the letter?

The Referee: Introduce the document if you deem it necessary, and it may later be withdrawn at the conclusion of the case.

Mr. Bartley: Yes, the Trustee will introduce this letter as the Trustee's Exhibit next in order.

The Referee: The letter from Philip Bloom to Pacific Palmdale Development Company, dated April 12, 1954, is received as Trustee's Exhibit 2.

Q. (By Mr. Bartley): Mr. Bloom, you stated that you were informed by Mr. Hudson that Mr. Granger represented him as his attorney in the bankruptcy matter substantially prior to April 19, 1954. Was it a period as long as a month prior to April 19, 1954? A. I would say so.

Q. Was it longer than a month prior to April 19, 1954? A. I think so.

Q. Well, to the best of your recollection approximately how long in months or weeks was it prior to April 19, 1954, that you received this information from Mr. Hudson?

A. I would say a pretty good date would be somewhere around January or February.

Q. In January or February, 1954? [168]

A. Yes.

(Testimony of Philip Bloom.)

Q. Mr. Bloom, at any time did Mr. Hudson or Mr. Granger inform you in any way to any effect that Mr. Granger represented Mr. Hudson's interest in the organization of Pacific Palmdale Development Company, Incorporated?

Mr. Granger: Object to that question as having been asked and answered several times.

The Referee: The objection is sustained.

Q. (By Mr. Bartley): You needn't answer that, Mr. Bloom. A. Oh, good.

Q. In your discussions as to the formation of the Pacific Palmdale Development Company between Mr. Hudson, Mr. Granger and yourself, was it determined what interest Mrs. Hudson was to have in this organization?

Mr. Granger: Object to the question on the ground it calls for a conclusion of the witness.

The Referee: Your objection is sustained.

What was said as to what Mrs. Hudson's interest was to be in this corporation, Mr. Bloom?

The Witness: I would say stockholder. I don't know what was said, I better say that.

The Referee: Was there any conversation in regard to what her interest was to be in the corporation, or what she was to receive in the corporation? We are not asking for your guesses, we are asking for what was said.

The Witness: I can't recollect anything being said, [169] but I know the fact, I know the situation, but I can't remember as to how or who said it.

Q. (By Mr. Bartley): Was there anything said

(Testimony of Philip Bloom.)

as to why she was to be a shareholder in the corporation? A. No, not to me.

Mr. Bartley: I have no further questions.

The Referee: Mr. Bloom, you have previously testified that you believe the Articles of Incorporation of Pacific Palmdale Development Company heretofore introduced as Respondents' Exhibit I were signed by you on the date they purport to have been acknowledged on March 9, 1954?

The Witness: Yes.

The Referee: Did you appear before any Notary Public at the time you acknowledged these Articles of Incorporation?

The Witness: Let's see. I went to Mr. Granger's office. I think this was—I think I was there once or twice.

The Referee: Do you know the person named as Notary, Jack Leslie Foell, F-o-e-l-l?

The Witness: No.

The Referee: Were you ever asked whether you acknowledged this document by anyone purporting to be a Notary Public?

The Witness: Would you ask that question again?

The Referee: Repeat the question.

(Question read.) [170]

The Witness: I don't think so.

The Referee: Where were you when you executed it?

The Witness: I believe I was in Mr. Granger's office.

(Testimony of Philip Bloom.)

The Referee: Who else was present at the time you executed these Articles of Incorporation?

The Witness: I don't know if I just stopped by and signed it, or if we had a meeting in Mr. Granger's office.

The Referee: Were you advised when the Articles of Incorporation were actually filed with the Secretary of State?

The Witness: No, I wasn't.

The Referee: Do you know when the Articles of Incorporation were actually filed with the Secretary of State?

The Witness: I would say no.

The Referee: Were you informed that the Articles of Incorporation of Pacific Palmdale Development Company were to be filed immediately after they were acknowledged?

The Witness: Was I informed?

The Referee: Yes.

The Witness: That they were to be filed as soon as they were acknowledged?

The Referee: Yes.

The Witness: I assumed it.

The Referee: Did you know that the filing of the Articles of Incorporation was to be withheld for a month, or approximately a month? [171]

The Witness: No.

The Referee: You have known Mrs. Hudson for some time, haven't you?

The Witness: Yes, I would say about the same time.

(Testimony of Philip Bloom.)

The Referee: You know she is a housewife?

The Witness: Yes.

The Referee: You know she has a number of children?

The Witness: Yes.

The Referee: Did you ever know her to be engaged in any business deal?

The Witness: She used to do some letter writing, possibly some bookkeeping, but outside of that I don't know.

The Referee: Did Mr. Hudson tell you why he was using Mrs. Blanche V. Hudson as one of the incorporators?

The Witness: No.

The Referee: Did Mr. Granger tell you why Blanche Hudson was being used as one of the incorporators?

The Witness: No.

The Referee: Did anyone ever tell you that Mrs. Hudson was to be active in the proposed Pacific Palmdale Development Company?

The Witness: I know that she was to have an interest in it.

The Referee: Will you please read the question to the witness?

(Question read.) [172]

The Witness: Yes.

The Referee: Who told you?

The Witness: Mr. Granger.

The Referee: What did he say that Mrs. Hudson was going to do?

(Testimony of Philip Bloom.)

The Witness: I don't believe that he said.

The Referee: Well, when you say he told you she was to be active, what did he say? Repeat his language as near as you can.

The Witness: I don't believe he outlined any duties that she was to perform.

The Referee: Did Mrs. Hudson accompany you to Palmdale when you looked over the land?

The Witness: No.

The Referee: Was she present at any of the conferences with Mr. Thornburg?

The Witness: No.

The Referee: Did you ever attend a stockholders meeting of Pacific Palmdale Development Company?

The Witness: I think so.

The Referee: When?

The Witness: I don't know.

The Referee: Did you ever attend a meeting of any Board of Directors?

The Witness: I think so.

The Referee: When? [173]

The Witness: I don't know.

The Referee: Do you know who the officers of Pacific Palmdale Development Company are?

The Witness: At the time I was in it I was president, or tentatively scheduled to be president.

The Referee: Who were the other officers?

The Witness: Mr. Granger, and I believe Mrs. Hudson.

(Testimony of Philip Bloom.)

The Referee: What were the respective offices of Mr. Granger and Mrs. Hudson?

The Witness: I don't recall.

The Referee: Was Mr. Hudson ever a director or an officer of the corporation up until the time you terminated?

The Witness: No.

The Referee: At the time you terminated your relationship with the corporation did it have any assets of any kind?

The Witness: Not that I know of, no.

The Referee: Did you ever contribute any money to the Pacific Palmdale Development Company?

The Witness: Not outside of the incorporation fees, no.

The Referee: Did you pay the money for incorporating this company; the cost of incorporating?

The Witness: I paid half, or one-third.

The Referee: How much did you pay?

The Witness: I think it was $40; $37.50 or $40, I think that was my portion. [174]

The Referee: Did Mr. Hudson attend all meetings or all conferences relating to the proposed purchase from Mr. Thornburg of the property at Palmdale?

The Witness: No, I did most.

The Referee: Mrs. Hudson attended none of them, I believe you said?

The Witness: That is right.

The Referee: Do you know of anyone else who

(Testimony of Philip Bloom.)

contributed any money other than the costs of incorporating the company?

The Witness: No.

The Referee: Do you know if an application for issuance of stock was ever made to the Corporation Commissioner of the State of California?

The Witness: No, I don't know that.

The Referee: Do you know if any stock was ever issued to any stockholders of the corporation?

The Witness: I don't know that; either.

The Referee: Did you ever receive any money from the corporation?

The Witness: No.

The Referee: Do you have any claims against the corporation?

The Witness: No.

The Referee: You have no interest in any property that it may have acquired since your letter of April 12, 1954?

The Witness: I would say no. [175]

The Referee: Was the deal with Mr. Thornburg for the purchase of the property at Palmdale ever consummated in any other form?

The Witness: No.

The Referee: The entire venture was abortive?

The Witness: Right.

The Referee: And although you heard of the deal with the Commodity Credit Corporation, you never had any interest in that deal?

The Witness: That is correct.

The Referee: So any dealings that the corpora-

(Testimony of Philip Bloom.)

tion had in that respect were after your interests were terminated?

The Witness: I would say yes.

The Referee: Do either counsel have any questions?

Mr. Granger: Yes, I have, your Honor.

Mr. Bartley: I will wait until after Mr. Granger is through. I have only a couple more questions.

Recross Examination

Q. (By Mr. Granger): Referring to the Court's last question, Mr. Bloom, do you know when any deal was made between Pacific Palmdale Development Company and the Commodity Credit Corporation, if at all. A. No.

Q. Have you any basis of comparison as to time when you knew that the Pacific Palmdale Development Company had [176] any relationship with the Commodity Credit Corporation deal?

I will rephrase the question.

Have you any basis of reckoning time as to the beginning of a transaction between Pacific Palmdale and anyone with reference to a grain bin deal?

A. Gee, I would say no.

Q. You have heard me speak of Mr. Hudson's bankruptcy matter? A. Yes.

Q. Do you have any independent recollection of when I made any such statement as to Mr. Hudson's bankruptcy deal proceedings? A. Yes.

Q. I want your clear memory on it as clearly as you can get it.

(Testimony of Philip Bloom.)

A. I would say somewhere in January or February, when I first stopped over at John's house. I think it was shortly thereafter.

Q. By the term "bankruptcy," what do you mean by the term "bankruptcy"?

The Referee: What do you understand the term "bankruptcy" to mean is what counsel is asking you?

The Witness: I would say "bankruptcy" means that a party is not going to be liable to his creditors any more.

Q. (By Mr. Granger): Do you relate the term particularly to a court proceeding or to a financial condition? [177]

A. I have always used it as a condition when things really looked bad and the inevitable is in view. I used the term "bankrupt."

Q. In connection with your testimony, in answers to the Court's questions, the conversation that you had with Mr. Granger in which Mr. Granger stated that he was attorney for Mr. Hudson in the bankruptcy matter, in what relation would you say that you understood the word "bankruptcy" to be used?

Mr. Bartley: I want to object to that question. The specific discussion should be asked rather than conclusions of the witness.

The Referee: The objection is sustained.

Q. (By Mr. Granger): Mr. Bloom, do you remember the circumstances under which the first ref-

(Testimony of Philip Bloom.)

erence was made to Mr. Hudson's bankruptcy or to his financial condition?

A. Do I remember what?

Q. The first reference in a conversation with me to Mr. Hudson's——

A. Do you want the time?

Q. Yes, do you remember when that was? Do you remember a conversation particularly?

A. Not particularly, but I know after I first saw John about the whole Palmdale thing, I saw you shortly thereafter, and I think you gave me the story of what had happened with John. [178]

Referring to that story and the condition of Mr. Hudson as disclosed in that conversation, is that what you mean by the term "bankruptcy"?

A. I think that is what I mean: Things were looking bad or looking down, we will put it like that, and I just concluded it was a bankruptcy.

Q. Can you remember what I said to you in connection with my representation of Mr. Hudson in words, can you remember that clearly?

A. I had inquired, if I am not mistaken, why John didn't go bankrupt immediately——

Q. Of whom did you inquire that?

A. I think with you, Mr. Granger, or I don't know if it was a general discussion with several people. I didn't know any of the technicalities, but anyway, I said, "It looks to me like a bad issue," and you said, "John doesn't want to go bankrupt and he is doing everything in his power to make some kind of a pay schedule or to come to some

(Testimony of Philip Bloom.)

terms with his creditors so that he won't have to declare bankruptcy."

Q. Was it revealed to you at that time that he had already made an assignment for the benefit of creditors? A. I don't know, Mr. Granger.

Q. Was the name of Mr. Stutman ever referred to as an attorney for Mr. Hudson in your presence?

A. I don't believe I have ever heard that name.

Q. Do you know when this immediate bank-
[179] ruptcy proceeding was started?

A. No.

Q. Would you say that there was ever a discussion in your presence and in that of Mr. Granger with reference to this particular bankruptcy as a proceeding?

A. No, I don't believe so.

Q. When you were at my office in connection with the signing of the Articles of Incorporation do you remember meeting a Mr. Feld in my office?

A. Not clearly.

Q. Would you say that you didn't meet him?

A. I couldn't say either way. I couldn't say that I didn't meet him, no.

Q. Mr. Bloom, after signing the Articles of Incorporation did you give me any instructions as to when they should be filed?

A. No, I don't believe so.

Q. Did the question of the time of filing concern you particularly at that time? A. No.

Q. Have you had any personal participation, Mr. Bloom, in the corporate functioning of Pacific

(Testimony of Philip Bloom.)

Palmdale Development Company other than to sign Waivers of Notice of Meetings?

A. No. I would say that is the extent of it.

Mr. Granger: I think that is all.

Mr. Bartley: I have one or two questions, your Honor, [180] that will only take a brief period.

Your Honor, I believe that Exhibits A and B of the Respondents are minutes of meetings of the Board of Directors, or either A or B or C, your Honor, and I would like to have the exhibits which are copies of the minutes of the corporation.

The Referee: Here is the exhibit file.

Mr. Granger: Are those the originals, or do I have them?

Mr. Bartley: I think you have the originals. We stipulated that you would retain the originals subject to examination.

Redirect Examination

Q. (By Mr. Bartley): I will hand you a document, Mr. Bloom, which purports to be minutes of the meeting of the Board of Directors of April 8, 1954, of this corporation. At the top there is a "Consent to a Special Meeting of Board of Directors," which I won't read in detail.

The middle signature in the three lines of signature underneath that language, can you identify that signature? A. That is my signature.

Q. Do you recall approximately when you signed that? A. No.

Q. Did you sign any minutes of any meetings of

(Testimony of Philip Bloom.)

the Board of Directors early in April of 1954? [181]

A. I haven't the faintest idea.

Q. Were you ever given any knowledge of the business that was transacted at that meeting?

A. No.

Q. I will ask you to read that portion of the minutes of the meeting which covers resolution, which starts at the bottom of the minutes.

A. If I read this I might see something else.

Q. I will just ask you to read that. Just this portion of the resolution is all I asked you to read, and here is the remainder.

Did you ever have any discussion with either Mr. Granger or with Mrs. Hudson regarding the authorization of Mr. Hudson to temporarily act as treasurer of the corporation, as set forth in these minutes? A. I don't recall that.

Q. I offer you what purports to be the minutes of a meeting of the Board of Directors held on April 20, 1954, and a consent to the meeting, which is on top of the minutes, and again I will ask you to identify the middle signature which appears on one of those three lines underneath.

A. Yes, it is my name.

Q. Is that your signature? A. Yes.

Q. Do you have any recollection whatever of approximately when you signed this? [182]

A. No.

Q. Do you recall whether it was before or after April 20, 1954? A. No, I don't.

The Referee: Do you recall whether you signed

(Testimony of Philip Bloom.)

any waivers or any documents in connection with Pacific Palmdale Development Company after you tendered your resignation on April 12, 1954?

The Witness: Yes, I think I did sign some documents after that time.

The Referee: At whose request?

The Witness: I don't recall.

Mr. Bartley: No further questions.

Recross Examination

Q. (By Mr. Granger): Mr. Bloom, do you recall from time to time I presented to you purported Waivers of Notice of Directors' Meetings?

A. I remember the presentation, I think, of certain things. I don't recall specifically what they were.

Q. On various occasions you signed waivers without inquiring particularly into the business at hand, or what happened at the meeting or what was to happen at the meeting. Isn't that correct?

A. That is right.

Q. In acting as president of Pacific Palmdale [183] Development Company at any time, Mr. Bloom, did that follow any official action of the Board of Directors, do you know?

A. I don't believe so. I don't recall.

Q. Did you just assume to sign a document——

A. In order to make the applications to these various VA boards, and what-not, and FHA Boards, I think.

(Testimony of Philip Bloom.)

Q. Did you consider that important other than just to act as an agent for the corporation?

A. I would say that is all.

Mr. Granger: I think that is all.

Mr. Bartley: No further questions, your Honor. I will ask that the witness not be excused until the end of the hearing.

The Referee: The witness will be excused at the conclusion of the hearing.

Is there anything else?

Mr. Granger: Yes, your Honor. Mr. Hudson desires to make a statement with reference to some of his testimony of yesterday, the last session, I should say.

Mr. Bartley: Your Honor, prior to that I wish to conduct my cross examination of Mr. Granger. I feel certain Mr. Hudson will be recalled by both the Trustee and Mr. Granger.

Mr. Granger: That is all right. Mr. Hudson just wants to correct some testimony, just as long as that opportunity is afforded him. [184]

The Referee: The Court had hoped that we could conclude this morning, and for that reason had not taken the usual morning recess, and also continued beyond the noon hour. However, it seems that we will not conclude the matter, and the matter is therefore continued until 2 o'clock, and all witnesses, including Mr. Bloom, are ordered and directed to return at 2 o'clock without further notice.

(Whereupon a recess was taken until 2 o'clock P.M.)

Thursday, September 22, 1955, 2:00 P.M.

The Referee: I believe when we adjourned we were just about to recall Mr. Granger to the stand for cross examination. Is that correct?

Mr. Bartley: That is correct.

The Referee: Mr. Granger, will you come forward and take the witness stand.

MERRILL L. GRANGER

recalled, testified further as follows:

Cross Examination

Q. (By Mr. Bartley): How long have you been engaged in the practice of law?

A. Since about 1915.

Q. Have you practiced law in the insolvency field? A. I have.

Q. Approximately when was that?

A. From probably 1926 to, oh, 9 or 10 years following.

Q. During that period were you associated with the law offices of Craig & Weller here in town?

A. That is right.

Q. During that practice in the insolvency field did you have any practice in relation to the Bankruptcy Act?

A. Not much; most of my work was in the State Courts.

Q. But, Mr. Granger, isn't it a fact that you did

(Testimony of Merrill L. Granger.)

and [186] have practiced bankruptcy law for some time? A. I say not much.

May I explain that answer?

The Referee: Yes, you may explain.

The Witness: At the time I was associated with Craig & Weller there were two lawyers, Thomas Tobin and James Kelleher, who were engaged particularly in the bankruptcy practice of that firm, and I particularly in the State Court work, but did considerable in connection with assignments for the benefit of creditors.

After leaving the firm of Craig & Weller, I have probably had three or four bankruptcy matters. One, I think, they referred to me, and one, I think, or two or three, were from just clients that came in.

Q. (By Mr. Bartley): Mr. Granger, did you have any knowledge whatever of the assignment for the benefit of creditors of Mr. Hudson prior to April 6, 1954?

A. I knew that Mr. Hudson had made an assignment, but I didn't know the terms and conditions, except, I believe that in the course of it I did learn that he made an assignment without release of creditors.

The Referee: Let's take a short recess so I may *hear Mr.* Laugharn has to say in connection with Trout Town.

(Recess.)

The Referee: You were interrogating the witness, and he stated he handled assignments for the benefit of creditors [187] while with the firm of

(Testimony of Merrill L. Granger.)

Craig & Weller, and after leaving the firm one case was referred to him, and then he had three or four bankruptcy matters subsequent thereto, and he knew about the assignment for the benefit of creditors in this matter.

Mr. Bartley: Yes.

Q. When did you first acquire knowledge that an assignment for the benefit of creditors had been made by Mr. Hudson?

A. I would say, as closely as I can remember, early in 1954.

Q. By "early," was it in January, February?

A. I would say perhaps in January or February. It might have been before that.

Q. Did you advise Mr. Hudson in any way in regard to this assignment for the benefit of creditors?

A. Not at that time, because I understood him to be represented by counsel in connection with it.

Q. Did you at a later date advise him in connection with the assignment for the benefit of creditors?

A. Not in connection with the assignment, no.

Q. Did you discuss the details of that assignment for the benefit of creditors with Mr. Hudson?

A. Only in some measure.

Q. In what measure did you discuss it?

A. Insofar as I can recall right now, Mr. Hudson had turned over a piece of property in Van Nuys, and he had some [188] assets at distant points, that I understood that Mr. Stern went out on—I just don't know what these assets were.

Q. Did you discuss specifically whether or not

(Testimony of Merrill L. Granger.)

Mr. Hudson's creditors would release him from that assignment for benefit of creditors?

A. No, I did not. However, I did have a discussion about that time with reference to a release.

Q. What was that discussion?

A. I asked him if his creditors were going to release him, and he said that he had understood when the assignment was made that he would get a release, but then, as I recall, he informed me that it was in form without release.

Q. When did he inform you it was without release?

A. I would say probably about the same time; January or February.

Q. Mr. Granger, did you have anything to do with the financial affairs of the bankrupt prior to April 6, 1954?

A. No, not with his financial affairs, but I had represented him in a lawsuit.

Q. Did you have any discussions with Mr. Hudson regarding bankruptcy prior to his trip to Washington that we have heretofore heard testimony about?

A. I might say, Mr. Bartley, that over quite a period of time the subject of bankruptcy had been mentioned, although not discussed at any length at all.

Q. Over what period of time was this bankruptcy [189] mentioned?

A. I don't remember particularly, but in connection with some offers of work that Mr. Hudson had,

(Testimony of Merrill L. Granger.)

I think I told him that if he had an accumulation from that work he could expect his creditors would undertake to appropriate it.

Q. When did you tell him that? Was it prior to his trip to Washington and the incorporation of the corporation, or was it after the incorporation of the corporation?

A. I would say this statement was made probably before he went to Washington. May I finish the statement?

Q. Go right ahead, Mr. Granger.

A. And I told Mr. Hudson that if he took a job and undertook to build a fund to finance himself on an independent operation that he could probably expect that his creditors would appropriate it unless he had a release from them under the assignment, or received a discharge in bankruptcy.

Q. Mr. Granger, who suggested this bankruptcy proceeding, was it you or Mr. Hudson?

A. That I can't tell you.

Q. To the best of your recollection?

A. I don't have any recollection on that other than what I have told you, that subject was discussed, but whether he told me to go ahead and file a petition in bankruptcy, or whether I told him, I just don't know.

Q. To the best of your recollection when was the decision made to go ahead with the bankruptcy proceeding? [190]

A. I think that was made after he got back from

(Testimony of Merrill L. Granger.)

Washington, and just about the time that I started work on that.

Q. Could it have been made before he went to Washington?

Mr. De Falla: I object to that, your Honor. I believe the question has been answered.

The Referee: Your objection is overruled.

The Witness: I don't think so, Mr. Bartley.

May I explain that answer, your Honor?

The Referee: You may.

The Witness: I had had some talk with Mr. Stutman, who represented Mr. Hudson in connection with the bankruptcy and it was my impression that Mr. Stutman was going to file a petition in bankruptcy for Mr. Hudson.

Now, sometime or other Mr. Stutman declared to me that he wasn't going to file a petition in bankruptcy, and he suggested that I not file it.

I don't know just when this was, I couldn't tell you, Mr. Bartley.

Q. (By Mr. Bartley): Was it prior to the Washington trip?

A. It probably was, but I couldn't tell you.

I think Mr. Stutman wrote me a letter in connection with that, and if we could have that letter that would confirm me.

Q. Mr. Granger, during the drafting of the contract [191] which was signed in Washington, did you make any representations to Mr. Minton that you were acting as an officer of the company, as distinguished from the attorney of Mr. Hudson?

(Testimony of Merrill L. Granger.)

A. No, I don't believe so. I don't think that was discussed.

Q. Was it discussed in any manner whatsoever?

A. No. I think the statement was made simply that the contract would be made between Lloyd R. Reeve, Incorporated and Pacific Palmdale Development Company, a corporation, and the subject was not developed after that.

Q. Mr. Granger, is it not a fact in the drafting of the April 7, 1954 contract you appeared and acted as an attorney, as distinguished from appearing and acting as an officer and director of the corporation?

A. No, it is not.

Q. What is the fact?

A. The fact is that the Pacific Palmdale Development Company, a corporation, originated with me when I, realizing that Mr. Hudson was not going to be active on his own, wanted to capitalize on his talents and skill as a mass production builder, and that is when it started. Everything that followed was in pursuance of that original thought on my part, and it was for myself primarily that I started that.

Q. Mr. Granger, did you have any discussions with Mr. Philip Bloom prior to April 12, 1954, as regards this Thornburg, or whatever the name of the man was, Corporation? [192]

A. Yes, I did.

Q. During those conversations did Mr. Bloom in any way signify that he was not still willing and able to go through with the Pacific Palmdale Development Company?

(Testimony of Merrill L. Granger.)

A. Not at that time.

Q. When did these conversations occur?

A. I am afraid I don't understand what conversations you are referring to.

Q. The conversations which you have stated you had; conversations relating to this other corporation.

A. With reference to Thornburg Manor?

Q. That is correct.

A. I would say they were about the time that Mr. Bloom gave his resignation to the corporation. That is my best memory on it.

Q. Did you have any discussions about any other corporations handling this transaction with Mr. Bloom prior to that time?

A. As I recall, Mr. Bloom said to me that he might handle his own interest through his own corporation.

Q. When did he tell you this?

A. About the time of the resignation.

Q. Did you have any discussion at all with Mr. Bloom as regards the grain elevator deal?

A. No, except perhaps to tell him that Pacific Palmdale Development Company had taken one.

Q. When would these conversations have occurred?

A. That again would just be about the time of his resignation.

Q. This would be after the corporation was incorporated and the contract signed. Is that correct?

A. I would say yes, that is my best memory of it.

(Testimony of Merrill L. Granger.)

Q. Mr. Granger, what was the background and the conversations which occurred between you, Mrs. Hudson and Mr. Hudson prior to drafting of the agreement which is now an exhibit on file, of July, sometime in 1953, that the property remain the sole property of Mrs. Hudson?

A. That was back in—just at the outset of the idea that I had for capitalizing on Mr. Hudson's efforts, and that was about the first thing I did to work that out. That was back, as I recall, in 1953.

Q. What reason did the Hudsons give for wanting such a document to be drafted?

A. They didn't give the reason; I gave the reason to them.

Q. What reason did you give to them?

A. Because Mr. Hudson was in difficulty with his creditors, and I wanted to use Mrs. Hudson in connection with the working out of the corporation, and I wanted also to use Mr. Hudson's services in some form that I might set up which then wasn't determined.

Q. Was the sole reason for that agreement to protect [194] Mrs. Hudson against the creditors of Mr. Hudson?

A. No, that wasn't considered by me exactly. I wanted Mrs. Hudson as an independent operator with me; independent from her affairs with Mr. Hudson.

The Referee: Hasn't this all been gone into before? Hasn't this been covered?

(Testimony of Merrill L. Granger.)

Mr. Bartley: I think it has been covered. I won't pursue it any further.

Q. Mr. Granger, do you have with you the corporate books of Pacific Palmdale Development Company?

A. I have the minute book, and that is the only book that there is, Mr. Bartley.

Q. Did this corporation keep any ledgers or accounts?

A. No, it had no capital structure or financial transactions beyond its mere incorporation.

Q. Would the corporate minute book reflect any payments that the corporation made to Mr. Hudson?

A. Yes. There were two of them that appeared in the minutes.

The Referee: Weren't there three payments? One of $1,000 and one of $15,000 and one of $5,000?

Mr. Bartley: One payment of $1,000 was without a resolution, and then there were two payments with resolutions.

Q. Mr. Granger, did this corporation ever file an income tax return? [195] A. Yes.

Q. When?

A. Well, for 1954. I don't remember the date. A copy of that is in my file.

Q. Did you prepare that income tax return?

A. With Mr. Hudson I did.

Q. I wonder if we could see that income tax return?

A. May I leave the stand, your Honor, to get it from my file?

(Testimony of Merrill L. Granger.)

The Referee: You may.

You may now proceed, counsel.

Q. (By Mr. Bartley): Mr. Granger, I have in my hand what purports to be a 1954 corporation franchise tax return. Is this a copy of one that was submitted to the office of the Director of Internal Revenue? A. I think so.

Q. I am correct that this is a statement of State income tax. Was there a Federal tax return?

A. Yes.

Q. Was it substantially identical to the one that I have in my hand?

A. I would say so, as to the figures, yes.

Mr. Bartley: Mr. De Falla, this merely shows an income of $20,000, and the other matters are left blank.

The only other comment made is that Schedule J, deductions, payments and an agreement with Mr. Hudson whereby [196] he gets the first $50,000 of the profits of the corporation?

Mr. De Falla: I am not familiar with this form, counsel.

Mr. Bartley: Mr. Granger, as distinguished from a witness, would you stipulate that is what it is?

Mr. Granger: I would so stipulate.

Q. (By Mr. Bartley): Mr. Granger, what interest, if any, was Mrs. Hudson to have in this corporation? A. 44 per cent.

Mr. William Hudson was to have 44 per cent, and I 12 per cent.

In addition to that, Mr. Bartley, if there had been

(Testimony of Merrill L. Granger.)

income there were salaries voted that were provided for.

Q. What was your salary to have been?

A. $3,500, as I recall, plus any special arrangement that I——

Q. What office were you to hold?

A. I started out as president. That was then switched to secretary later on.

The Referee: Who became president later on?

The Witness: Mrs. Hudson at the same time. Until that time she had been secretary.

Q. (By Mr. Bartley): Mr. Granger, did you have any special knowledge or skill as regards the construction of grain elevators or grain bins?

A. I did not. [197]

Q. Did you ever engage in this type of business before?

A. Only to build a house for myself.

Q. Mr. Granger, did you have a fee arrangement with Mr. Hudson as distinguished from the corporation? A. Yes, I did.

Q. What sort of arrangement did you have with Mr. Hudson as regards the services rendered to him?

A. I have an arrangement with Mr. Hudson now.

Q. What is the arrangement?

A. That until there is a substantial sum given to me, which is indeterminate, that I would receive 12 per cent of his income.

Q. Was this 12 per cent figure considered when

(Testimony of Merrill L. Granger.)

the corporation was incorporated, and you were to get 12 per cent of the corporation?

A. That is right. I set up the 12 per cent for the corporation, because I was satisfied with the arrangement that I had made with Mr. Hudson, and I was satisfied to take 12 per cent against my remaining interest in either the Thornburg venture or the grain bin deal.

Q. Have you received any payments from Mr. Hudson since April 19, 1954? A. I have.

Q. What payments have you received from Mr. Hudson?

A. I received $1,800 on one occasion.

I received $600 on another occasion. [198]

Q. Do you know whether or not these sums came out of the $21,000 paid to Mr. Hudson from the grain elevator deal?

A. They didn't come out of the $21,000, because we never considered that compensation, but they came out of the $20,000; 12 per cent each time.

Q. Did you receive any telephone calls from Washington, D. C. from Mr. Hudson during April of 1954? A. Yes, sir.

Q. When did you receive a telephone call or telephone calls from Mr. Hudson from Washington?

A. It would be perhaps on the 7th or 8th, or perhaps on both days.

Q. What was the discussion in those telephone conversations?

A. I can't separate the subjects as to conversa-

(Testimony of Merrill L. Granger.)

tions, but I know the substance of the conversations of both of them.

Q. What was the substance?

A. That Mr. Reeve had arrived there with the contract that had been prepared between Mr. Minton and myself, and then Mr. Hudson had looked at it, and he thought it was equitable between the parties, but he wanted to know about execution of it, and I told him that Mrs. Hudson and I would constitute him a treasurer for the purpose of signing at that time and place, and then it would be all over then. His agency was just for that purpose. [199]

Q. Mr. Granger, why was a resolution adopted in the Board of Directors meeting of, I believe, April 8, 1954, authorizing Mr. Hudson to act as treasurer of the corporation for the limited purpose of signing this contract? Why was he made an officer for the limited purpose and the limited duration?

A. At the time Mr. Minton and I drew the contract in Mr. Minton's office, work was given to a stenographer there to complete late in the day after I left Mr. Minton's office.

Mr. Minton and I both had the plan at that time that when the stenographer would complete it Mr. Minton would take it to Mr. Reeve at the airplane. That was without allowing any time for any officer of Pacific Palmdale Development Company to sign it here, and I understood from Mr. Hudson's conversation that it was desired to execute the contract of joint venture before bid was submitted to the

(Testimony of Merrill L. Granger.)

officials in Washington, and to facilitate it that the only way that we could work it out was to name him an officer for that temporary purpose.

Q. Mr. Granger, did you ever have any discussions with Mrs. Hudson or with Mr. Hudson regarding whether or not he should hold an office in this corporation?

A. No, I never did.

Q. You never discussed Mr. Hudson at all as regards his being an officer of this corporation?

A. I never considered the question of his [200] being an officer of the corporation except for this limited purpose on that telephone call.

Q. Have you ever received any moneys from this corporation? A. No, I have not.

Q. What sums, if any, including fees for filing Articles of Incorporation, were paid out of your personal funds, and what advances, if any were made by you to the corporation as distinguished from advances to corporate officers?

A. Mr. Bloom gave me a sum of money. I can't tell you now how much it was, but it was about twenty-five, thirty, forty dollars, and I got a like sum from Mrs. Hudson. I wouldn't say a like sum, but I got some sum from Mrs. Hudson, and I supplemented it with some money of my own, but that I don't think was over ten or fifteen dollars, to pay a $25 franchise tax to the Secretary of State's office, pass it through his office, and the filing in the Secretary of State's office, and for corporation supplies, and so forth.

(Testimony of Merrill L. Granger.)

Q. Did you ever furnish any other moneys to the corporation?

A. No, and no one else did.

Q. In other words, Mr. Granger, you made no contributions whatever to the corporation other than your legal services, is that correct?

Mr. De Falla: I will object to that, your Honor. I believe he is assuming that Mr. Granger [201] testified to that effect. I don't think that is a fact that is in evidence.

The Referee: This is cross examination. Your objection is overruled.

The Witness: Yes, and I might explain that answer.

Mr. Bartley: I need no explanation.

The Witness: I would like the opportunity to explain.

The Referee: The witness is entitled to explain his answer.

Mr. Bartley: Yes, your Honor.

The Witness: When I made the trip to Palmdale I did not go as a lawyer, and when I interviewed Mr. Bloom and Mr. Hudson and Mrs. Hudson on these various matters I was not acting as a lawyer for the corporation.

The Referee: You testified that Blanche V. Hudson was to receive 44 per cent interest in the corporation and that William Hudson was to receive 44 per cent interest, and you were to receive 12 per cent interest in the corporation.

(Testimony of Merrill L. Granger.)

Is that William Hudson the son of John Lucas Hudson, Sr.?

The Witness: Yes, that is true.

The Referee: Proceed.

The Witness: I was explaining my answer.

While the service that I performed in organizing the corporation was legal in its nature, I was doing that on my own initiative, and no fee has been set up to Pacific Palmdale, and no fee charged, and it wasn't intended; it was [202] simply a part of my program for setting up the deal.

The Referee: You did not think that this 12 per cent that you were going to get, that you were to get from Mr. Hudson's earnings, was adequate in that regard?

The Witness: The 12 per cent wasn't determined at that time. At the time I prepared and filed the petition in bankruptcy for Mr. Hudson, he could pay me no fee.

Q. (By Mr. Bartley): Was there any sort of agreement between you and Mr. Hudson as regards the 12 per cent personal fee that he was to pay, and the 12 per cent of the corporation, that either one was to offset the other? A. No.

Q. The 12 per cent interest in the corporation was to be in addition to the personal fee of Mr. Hudson? A. Yes, sir.

Q. Whose desire was it to have the contract signed in Washington before a bid was made?

A. I do not know. I understood from Mr. Hudson in those conversations that both he and Mr.

(Testimony of Merrill L. Granger.)

Reeve felt it had to be signed before it was presented to the Commodity Credit Corporation, and also in that conversation—I will withdraw that. This I learned later.

Q. Who suggested the written contract?

A. Between the joint venturers?

Q. Yes, that is correct.

A. I don't know, because Mr. Hudson was [203] carrying on those negotiations as to Mr. Reeve's financing, and whether it was Mr. Reeve or Mr. Hudson that said that, I don't know.

Q. Did Mr. Hudson carry on the negotiations leading up to this contract as regards the joint venture?

The Referee: All of this has been gone into.

Mr. Bartley: The prior testimony of Mr. Hudson was that he had nothing to do with negotiating this contract, that is why I am asking his counsel if he negotiated it.

The Referee: The Court will permit the answer. It seems that the matter has been covered rather fully. However, the Court will permit the question to be answered.

The Witness: Mr. Hudson did not negotiate. On the occasion that Mr. Hudson was interviewing Liff & Kim on the Thornburg Manor matter, Mr. Liff stated that he knew Mr. Reeve, and Mr. Reeve might be interested, and Mr. Hudson reported that to me, and I asked him to interview Mr. Reeve and see what proposal was to be made, and I knew what

(Testimony of Merrill L. Granger.)

was going on, and it was under my suggestion, and he reported to me.

Q. (By Mr. Bartley): Did you discuss the terms of this contract at all with Mr. Hudson before he went to Washington?

A. I don't think so. I think that was all set up in Mr. Minton's office. I had some rough notes on the matter that I took into Mr. Minton's office.

Q. Where did you get the rough notes, from your conferences with Mr. Hudson? [204]

A. No, from my own consideration of the matter; determining what I wanted to go into the contract.

Q. Before Mr. Hudson went to Washington did you have any discussions with Mr. Hudson as regards what compensation he would receive as a result of services rendered to either the corporation or to the joint venture?

A. No. That wasn't determined until Mrs. Hudson and I met on the 20th.

Q. Was there any discussion that he would be paid anything?

A. No, only in furtherance of the earlier statement that I made to him before even January of 1954, that if I set up a deal I would like to know that I could have his services and his skill, but on what terms it was to be provided it was not set up until the 20th day of April.

Q. Mr. Granger, why was the setting up for the payment of the services of Mr. Hudson delayed until April 20, 1954, when he went to Washington

(Testimony of Merrill L. Granger.)

prior to the incorporation, and actually performed his services prior to that time in the securing of the bids?

A. I don't remember particularly, except that Mr. Hudson was leaving on the 20th to go to Sacramento and embark on that program, and I thought we should have something crystallized.

The Referee: You didn't feel it was advisable to put it over until after the filing of the [205] petition in bankruptcy?

The Witness: It wasn't that. It didn't have reference to that particularly, your Honor, because I had my own impressions, which were as to Mr. Hudson's rights in that matter, and they weren't with reference to that. Can I explain that answer a little bit further?

The Referee: Go ahead.

The Witness: It was known between Mr. Reeve and Mr. Hudson, and everyone that had any connection with the thing at all, negotiations of the transaction, that even after the government accepted the contract that it was going to be necessary to put up a bond——

The Referee: That has all been gone into at great length, and the Court does not see any materiality of the bond in connection with the transaction.

Do you have anything further?

Mr. Bartley: I have no further questions.

(Testimony of Merrill L. Granger.)

Redirect Examination

Q. (By Mr. De Falla): Mr. Granger, on his examination Mr. Minton stated that in a conversation with you he offered to let you co-sign checks on the joint venture account. Was that statement ever made to you? A. No, sir.

Mr. Bartley: Just a moment. I will object to that as irrelevant. [206]

The Referee: The objection may be deemed to have been made before the answer.

The answer is stricken for the purpose of the objection, and the objection is sustained as not proper redirect examination, and also having been gone into.

Mr. De Falla: I have no further questions.

Mr. Bartley: No further questions, your Honor.

The Trustee would like to recall Mr. Hudson.

The Referee: Mr. Hudson, take the stand.

JOHN LUCAS HUDSON, SR.

recalled, testified further as follows:

Mr. Granger: Before this testimony is started, your Honor, can I revert to the fact that Mr. Hudson wanted to make some statement about a part of his testimony in the last session.

The Referee: When counsel is through with the examination of the witness, if he feels it necessary to explain any of his previous testimony the Court will give him an opportunity to do it.

(Testimony of John Lucas Hudson, Sr.)

Direct Examination

Q. (By Mr. Bartley): Mr. Hudson, do you have any part of the moneys you received from Reeve, Incorporated, which is still in your possession or under your control? A. No.

Q. How were those funds disbursed and to [207] whom were those funds disbursed?

A. I couldn't explain how all of the money was disbursed.

The Referee: Gi . it to us as nearly as you can. Give us the items of expenditure from the $21,000 you received as best you can.

The Witness: Well, I have vouchers. I think it amounts to about $700 of the $1,000 was advanced for expenses, and I haven't turned them in yet, but I have them.

The Referee: You mean it cost you approximately $700 for your trip to Washington?

The Witness: No, I seem to have lost that receipt, your Honor. That is what I paid out for hotel bills and airplane fares and traveling when I was setting up the production facility in Sacramento, and fabricating these grain bins. I was up there quite a long time.

The Referee: What other items have you disbursed from this $21,000 that you received?

The Witness: I paid Mr. Granger the $1,800 and the $600, and I lived all of this time out of it, and I have had to buy a car.

Q. (By Mr. Bartley): What kind of a car?

(Testimony of John Lucas Hudson, Sr.)

A. 1950 Oldsmobile.

Q. Have you made any payments on your home or on any items?

A. Yes, I have made payments on my home.

Q. Any other items which you are purchasing on which you made payments?

A. Well, not that I can think of. I have paid doctor bills out of some of it, and I have lived out of some of it.

Q. Did you keep any records of your expenditures, Mr. Hudson?

A. Not like an accountant would keep them; not for my personal domestic expenditures at home.

Q. Are there any other items that you can recall that you paid out of the $21,000?

A. No, not right now.

Q. How much are your house payments per month? A. $90 a month.

Q. How much did you pay for the car?

A. I believe it was $825.

Q. Have you bought any automobiles for any members of your family?

A. Yes, I bought a 1952 Oldsmobile for my son.

Q. How much did you pay for that?

A. I believe that was $958.

Q. Have you bought any car for your wife?

A. No.

Q. Have you bought any presents for any members of your family?

A. No, except maybe at Christmastime. [209]

(Testimony of John Lucas Hudson, Sr.)

Q. Have you bought any presents of substantial value, any jewelry or anything of that nature?

A. No.

Q. This automobile that you purchased for your son, was that the one that was involved in the automobile accident? A. No.

Q. Did you settle the automobile accident?

A. We settled the case in connection with this bankruptcy proceeding and the Trustee received the proceeds.

Mr. Bartley: No further questions.

The Referee: Is there some part of your previous testimony that you wish to explain to the Court, Mr. Hudson?

The Witness: Yes, there is, your Honor. I am not sure that I answered the question wrongly, but after we left Mr. Granger was of the opinion that I did.

I think I was asked the question, did my wife, Mrs. Hudson, acquire any property after my adjudication, to which I answered no.

Now, if that was the question, then my answer was correct.

The Referee: Do you have anything further to say?

The Witness: Except that Mr. Granger said he thought the question was did my wife own any property after I was adjudicated a bankrupt.

Well, if that was the question, my wife owned property that she owned before bankruptcy. She didn't acquire any [210] property, but she had

(Testimony of John Lucas Hudson, Sr.)

property before the bankruptcy, which was discussed and settled with the Receivers and the creditors, and it was determined that property was to remain her property, and they had received property in the assignment that Mrs. Hudson had relinquished to me as my separate property, which was purchased from joint funds in 1951.

The Referee: What property does your wife own?

The Witness: My wife doesn't own any property now.

The Referee: What property did your wife own at the time you filed the petition in bankruptcy?

The Witness: My wife owned property in Portland, Oregon.

The Referee: Do you know the description of that property?

The Witness: No, your Honor, I don't know, but I could find out at home what it is.

The Referee: Was that property acquired after you and your wife were married?

The Witness: Yes, it was acquired in 1945.

The Referee: Was it purchased in 1945?

The Witness: Yes.

The Referee: For how much was it purchased?

The Witness: $1,625.

The Referee: Is it improved or unimproved property?

The Witness: It is unimproved.

The Referee: Has that property been sold since? [211]

(Testimony of John Lucas Hudson, Sr.)

The Witness: Yes, it has been.

The Referee: For how much was it sold?

The Witness: It sold gross, I believe, for $7,700.

The Referee: What was done with the $7,700, less commissions, that you received from the sale of that property?

The Witness: Well, Mrs. Hudson spent, I think there was about $2,100 in back doctor bills that she paid, and then she has just had an operation, and she paid the cost of the operation and the doctor, and we lived on it.

The Referee: When was this $7,700 received?

The Witness: I think it was either in the latter part of June or early July.

The Referee: Of 1954?

The Witness: No, of 1955.

The Referee: So you received that $7,700 in addition to the $21,000. Is that correct?

The Witness: Yes, counting the vouchers that I have for the $1,000 that was given to me to reimburse me for expenses, and to provide—$1,000 more than reimbursed what I had spent up to that date supervising this grain bin fabrication in Sacramento.

Mr. Bartley: May I ask a couple of questions in that connection, your Honor?

The Referee: Yes.

Q. (By Mr. Bartley): From where did the funds come that purchased this property? Did they come from your earnings? [212]

A. In 1945?

(Testimony of John Lucas Hudson, Sr.)

Q. Yes.

A. No. It came from a $5,000 loan that had been made to me by Dr. Frank W. Acker.

Q. When did this property become the sole property of your wife?

A. I think it was in 1951, possibly about midsummer.

Q. What was the consideration for the transfer of the property to your wife?

A. The consideration was the transfer of the Van Nuys industrial property which I had purchased in 1951, at the time the purchase was made for the transfer of that property as my separate and independent property.

Q. At the time the transfer was made were you in any sort of financial difficulty?

A. No, I was pretty well off then.

Mr. Bartley: No further questions, your Honor.

The Referee: That's all.

Mr. Granger: I would like to examine him in that regard.

The Referee: Go ahead.

Cross Examination

Q. (By Mr. Granger): In connection with that Portland property did you make a full disclosure of that on the assignment for the benefit of creditors? [213] A. Yes.

Q. Do you know if that was discussed by your creditors?

(Testimony of John Lucas Hudson, Sr.)

A. Yes. They sent a grant deed to be signed, and Mrs. Hudson——

Q. Pardon me, and following that they had an investigation in which they passed it?

A. Yes, it was all agreed upon and settled.

Q. Mr. Hudson, did you ever tell Mr. Reeve that you owned the Pacific Palmdale Development Company? A. No, I did not.

Mr. Granger: That's all.

The Referee: We will take a five-minute recess at this time.

(Recess.)

The Referee: Proceed, gentlemen.

Mr. Bartley: Your Honor, the Trustee will recall Mr. Reeve.

The Referee: Have we finished with Mr. Hudson?

Mr. Granger: You may recall Mr. Reeve, if you wish.

The Referee: Just a minute. Mr. Hudson, will you take the stand? Let's finish with him. Are there any questions that you have, gentlemen? I thought he gave his explanation after he was through testifying.

Mr. Granger: I have never put him on as my witness. If you recall, after I examined him [214] in connection with Mr. Bartley's examination, I asked the Court if I might put him on later.

The Referee: Very well.

JOHN LUCAS HUDSON, SR.,
recalled, testified further as follows:

Direct Examination

Q. (By Mr. Granger): Mr. Hudson, with reference to expenditures of money from this $20,000, did you make a trip to Washington on which you expended some of that money?

A. Oh, yes, besides the first trip.

Q. Just approximately when was that made?

A. That was made in July of 1954. I also visited grain bin sites and went all over North Dakota and Minnesota.

Q. About how much money did you spend on that trip from this sum of money?

A. Well, I would guess—I would just have to guess maybe five or six hundred dollars, or maybe seven hundred dollars.

Q. When did you go to Sacramento to begin work on the grain bins? A. April 20th.

Q. What year? A. 1954.

Q. What work did you do at Sacramento?

A. I organized the production unit. I set [215] up the plant, set up the plant's facility, employed the key personnel, started procuring materials and committing. I committed about $50,000 to $60,000 worth of materials between that time and the 28th; eight days, and laid out the loading facility. I talked and negotiated with the man from whom the site was rented, and just started production of grain bins, the fabrication.

(Testimony of John Lucas Hudson, Sr.)

Q. Did you continue off and on at Sacramento until the bins were finally shipped?

A. Oh, yes, I did.

Q. Was Mr. Reeve there to assist in that?

A. He came there. He spent most of his time——

Q. When would you say the fabrication of the grain bins was completed?

A. We had a time limit on that; it was very close. I would say they were completed within 45 days after we began, after the 20th of April.

Q. At the time of the fabrication of the bins did you confer and consult with Mr. Reeve with reference to the erection of them?

A. Yes, I did.

Q. Over how long a period of time did that go on?

A. Right up until recently I have discussed with Mr. Reeve.

Q. Mr. Hudson, in your past work has your wife worked in any relationship with you on construction deals? [216] A. Yes, she has.

Q. Just describe generally what her past experience has been with you?

A. Well, she has taken sub-bids, separated sub-bids; she has listed and kept track of the sub-bids and the accounts, and answered the telephone, and made appointments, and just general, you know——

Q. Has her work played a substantial part in your own efforts in construction work heretofore?

A. Yes, it has.

Q. At the time I first talked to you about for-

(Testimony of John Lucas Hudson, Sr.)

mulating some deal in the future, did you know whether or not I was apprised of her connection with your efforts in that respect?

A. Well, you asked me if she understood anything about the construction business, and I replied that she had helped me all these years.

Q. Where does your son William live?

A. He lives in Portland, Oregon.

Q. Is he married? A. Yes.

Q. Has he a family? A. Yes.

Q. Has he worked with you on different projects in which you were interested?

A. Yes, a great many of them. [217]

Q. Did he do so on this grain bin deal?

A. Yes, he did, he was the superintendent.

Q. Mr. Hudson, in any relationship which you have had, anything you have done with Pacific Palmdale Development Company or the grain bin deal, did you have any intention to delay or postpone the enjoyment of any of your creditors of any rights that they had against you or your estate?

A. No, I did not.

Q. In that reference did you have any intention to hinder or obstruct them in the enjoyment of any right that they had against you or against your estate? A. No.

The Referee: If you hadn't formed a corporation, taken the name of this corporation, would not your creditors have received the benefit of your services?

(Testimony of John Lucas Hudson, Sr.)

The Witness: Well, your Honor, I don't follow you.

The Referee: If this corporation, the Pacific Palmdale Development corporation, had not been formed and entered into the joint venture with Reeve & Company, would not your creditors have received the benefit of your services?

The Witness: And if I would not have taken bankruptcy?

The Referee: Yes.

The Witness: Yes, I believe so, your Honor.

The Referee: Very well.

Q. (By Mr. Granger): In connection with anything or any relationship you had with Pacific Palmdale Development [218] Company, did you have any intention to defraud or deny your creditors any proper enjoyment of your assets or estate?

A. No, I didn't.

Q. Did you at the time you made the assignment for the benefit of creditors turn over to Mr. Engleman, the Assignee, all of the property that you had except what you considered exempt property? A. Yes, I did.

Q. When you filed the petition in bankruptcy in this court on April 19, 1954, did you feel you owned any property that belonged to your creditors other than your exempt property, or that you had any property that should be listed that you didn't list? A. No, I didn't.

The Referee: Did you advise the Trustee in Bankruptcy at your first meeting that the agree-

(Testimony of John Lucas Hudson, Sr.)

ment had been entered into between Lloyd R. Reeve, Incorporated and Pacific Palmdale Development Company on April 7, 1954, which had a provision that it might be assigned to you at a later date?

The Witness: No, I did not.

The Referee: You didn't make clear Paragraph 14 of the contract, did you?

Mr. Granger: There was no examination of the bankrupt at the first meeting.

The Referee: Is that correct, Mr. Bartley?

Mr. Bartley: Not to the best of my [219] knowledge. I believe there was. I have a memorandum in my file that we did examine the bankrupt, but I will have to check my file in order to positively answer that.

Q. (By Mr. Granger): Do you remember whether you were examined at the first meeting of your creditors?

A. Yes. I remember that I was not examined.

Mr. Bartley. My file reflects that he was.

The Witness: No, I was not examined.

Mr. Bartley: Your Honor, I am in error in my statement. I cannot state whether he was examined or not at the time of the initiation of this proceeding. The Trustee was of the opinion that counsel would not be necessary, and counsel was subsequently employed.

The Referee: Very well.

Q. (By Mr. Granger): In connection with your relationship with Pacific Palmdale Development

(Testimony of John Lucas Hudson, Sr.)

Company, did you ever undertake to do anything in connection with the corporation's functioning and control, as distinguished from the participation in its business activities? A. No, I did not.

Mr. Granger: May I have Respondents' Exhibit B for identification, your Honor?

Q. Calling your attention, Mr. Hudson, to Respondents' Exhibit B, I will ask you to state whether that was ever delivered into your possession? A. That I was asked to sign that? [220]

Q. My question was whether that was ever delivered into your possession?

A. No, it was not.

Q. Under what circumstances did you first see that document?

A. I was in Mr. Reeve's office and Mr. Reeve was negotiating a settlement with these people.

Q. With what people?

A. Let's see, that is what I thought it was.

Mr. Bartley: I have lost track of the exhibit numbers.

Mr. Granger: Respondents' Exhibit B is the settlement or the authority to settle the Hays and Wares percentage.

Mr. Bartley: What was the question, Mr. Granger?

Mr. Granger: I will withdraw whatever it was.

Q. I will ask you, Mr. Hudson, under what circumstances did you see that document?

A. Mr. Minton presented it to me and asked me to sign it.

(Testimony of John Lucas Hudson, Sr.)

Q. Where were you at the time?

A. I was in the office of Lloyd R. Reeve, Incorporated.

Q. What did you respond to him?

A. I told Mr. Minton that I wouldn't sign it, that it concerned Pacific Palmdale Development Company.

Q. Thereafter was I called into that—by "I" I mean Mr. Granger—called into that meeting?

A. Yes. [221]

Q. What happened after that?

A. If I remember correctly, they had a clause or something in the agreement that required where you would release a lawsuit against them.

Q. Did I agree to or decline to do that?

A. You declined to do that.

Q. Did I consult you with reference to whether or not I should do that?

A. No, you did not.

Q. Did I prepare another document at that time where I did sign and deliver to them?

A. Yes, you did.

Q. And whereby Mr. Hays——

The Referee: Are you testifying or are you interrogating the witness?

Mr. Granger: I am sorry, your Honor. I think that is all.

Cross Examination

Q. (By Mr. Bartley): Mr. Hudson, how long was your son employed as a superintendent in Sacramento?

(Testimony of John Lucas Hudson, Sr.)

A. He was employed as a superintendent in Sacramento from the very beginning until the bins were fabricated, until after Mr. Reeve had gone up there and auctioned off the equipment and various things that were owned by the joint venture. [222]

Q. On what basis was he to superintend? Was he on a salary basis?

A. Yes, he was on a salary basis and expenses.

Q. Was he paid his salary all the time that he worked up there?

A. Yes.

Q. At whose request was this trip to Washington made?

A. It wasn't at anyone's request.

Q. You took it on your own to make that trip, in other words?

A. Well, the trip to Washington, I did.

Q. You mean the second trip to Washington?

A. The second trip to Washington.

I also took it on my own to go to North Dakota and Minnesota and examine and inspect all of the bin sites.

Q. Did Mr. Reeve or Reeve, Incorporated request that you make the trip?

A. On the contrary, Reeve, Incorporated requested that I do not make the trip, but when I talked to Reeve, Incorporated and told them what was going on out there they were very grateful that I did make the trip, and expressed their gratitude.

Q. Mr. Hudson, I show you a document which

(Testimony of John Lucas Hudson, Sr.)

purports to be a copy of this Exhibit B heretofore referred to by your counsel.

I call attention to a signature on the front [223] page, which has printed under it "John L. Hudson." Do you recognize that signature?

A. Well, it looks a lot like my signature.

Q. Is that your signature? Isn't it a fact that you recall signing this document, Mr. Hudson?

A. Let me read the document, please.

Well, I would have signed it——

The Referee: The question is, is that your signature?

The Witness: Yes, it is, your Honor, that is my signature.

Mr. Bartley: The Trustee will offer this document as Trustee's Exhibit next in order.

The Referee: Have you seen the document offered, Mr. Granger?

Mr. Granger: Yes, I have, and there is no objection.

The Referee: The document will be received in evidence as Trustee's Exhibit No. 3.

Q. (By Mr. Bartley): Mr. Hudson, isn't it a fact that you expected to be compensated for the services you rendered in Washington? A. No.

Q. Did you have any expectation of any realization from the services rendered to Reeve, Incorporated, in the assistance of the preparation of bids and drafting of the drawings and the trip to Washington?

A. Certainly not. I paid my own expenses. [224]

(Testimony of John Lucas Hudson, Sr.)

Q. You had no expectation of any payment whatsoever out of profits or from the joint venture for going on that trip?

A. None whatever, no, sir, and received none.

Q. Mr. Hudson, this telephone call which you have testified you made to your attorney prior to the signing of the agreement you signed in Washington, was that made in the morning or in the afternoon? A. I wouldn't remember that.

Q. It was made after you met Mr. Reeve, though, wasn't it?

A. I wouldn't even remember that.

Q. Merely to refresh your recollection, but not to repeat the testimony, Mr. Hudson, didn't you testify that you met Mr. Reeve; you looked over the agreement, and you called your attorney; that you had never seen the agreement prior to meeting Mr. Reeve?

A. Yes, but I am quite sure I talked with Mr. Granger, to whom you refer in this case as my attorney. I didn't talk with Mr. Granger as my attorney, but I did talk to Mr. Granger more than one time on the phone from Washington. I am sure I did.

Q. When was your first call to Mr. Granger?

A. Well, that one, I don't remember whether it was—I think it was before Mr. Reeve arrived; the first call, but I am not sure. I just can't remember. I wish I could. [225]

Q. Who paid your hotel bill in Washington, D. C. on that first trip? A. I did.

(Testimony of John Lucas Hudson, Sr.)

Q. Did Mr. Reeve pay any portion of your hotel bill?

A. No. Mr. Reeve offered to, but he didn't pay it.

Mr. Bartley: I have no further questions.

Redirect Examination

Q. (By Mr. Granger): At the time of signing Trustee's Exhibit 3, had there been determined approximately what the gross profit from the joint venture was? A. Yes.

Q. Would you say it was more——

The Referee: Why don't you ask the witness what it was.

Q. (By Mr. Granger): What was that profit, Mr. Hudson?

A. At that time Mr. Reeve——

Q. Just the sum, please.

A. Well, at that time it would be $130,000 and some odd dollars, but that was before Hays was paid.

Q. In calculating the interest that would pass to Pacific Palmdale, what deductions were to be made by way of percentages to others interested in the joint venture?

A. 10 per cent to Gene Wilbur, 5 per cent to Liff & Kim.

Mr. Bartley: Object to this on the ground that the [226] document has been introduced and is in evidence and speaks for itself.

The Referee: Your objection is sustained. All of

(Testimony of John Lucas Hudson, Sr.)

this has been gone into by both counsel on direct and on cross examination.

Mr. Granger: I would like to ask one more question.

The Referee: All right.

Q. (By Mr. Granger): When you named the figure of $107,000 as probable profit from the joint venture, was that before or after deducting the percentages to be delivered to Mr. Liff, Mr. Wilbur and——

A. That was before percentages were paid to those people.

Mr. Granger: That is all, your Honor.

Mr. Bartley: No further questions.

The Trustee will recall Mr. Reeve.

LLOYD R. REEVE

recalled, testified further as follows:

Direct Examination

Q. (By Mr. Bartley): Mr. Reeve, do you know who paid Mr. Hudson's telephone bill in Washington, D. C. during this period of April 7th until you left Washington? A. Yes.

Q. Who paid that bill? A. I did. [227]

Q. Did Mr. Hudson pay any portion of that bill?

A. He might have paid a portion of it, but I paid the bill.

Q. When did you first meet Mr. Hudson in Washington, D. C.?

(Testimony of Lloyd R. Reeve.)

The Referee: That has already been gone into thoroughly, counsel.

Mr. Bartley: Strike the question and I will rephrase it.

Q. Mr. Reeve, from the time you first met Mr. Hudson during the day that the contract was signed were you constantly with Mr. Hudson?

A. Yes.

Q. He never left your presence? A. No.

Q. Did he make any telephone calls to Los Angeles or to California?

A. Not to my knowledge.

Q. If he had made such a call would you have noted the call?

A. I believe I would.

Mr. Bartley: No further questions, your Honor.

Mr. Granger: I think that is all.

Mr. Bartley: The Trustee will recall Mr. Minton.

The Referee: Mr. Minton, will you come forward and take the witness stand. You have been previously sworn, [228] have you not?

Mr. Minton: Yes.

CARL W. MINTON, SR.

recalled, testified further as follows:

Direct Examination

Q. (By Mr. Bartley): Mr. Minton, during the period of the last two weeks have you had occasion to have any telephone conversations with a Mr. Bloom?

(Testimony of Carl W. Minton, Sr.)

A. Yes, the gentleman who was on the witness stand this morning.

Q. When did you have any such telephone conversations with Mr. Bloom?

A. It was during the noon hour of the last session of court here, when we were in court.

Q. What was the conversation you had with Mr. Bloom?

A. I might correct that. I believe it was the first session of the court, during the noon hour.

Q. What was that conversation; what was said?

A. I called Mr. Bloom on the telephone at his office in Culver City. I asked Mr. Bloom if he had any interest in the Pacific Palmdale Development Company that Mr. Hudson was connected with, and he answered, "None whatsoever."

I asked him if he had any interest in the grain storage bin program, and he said, "None whatsoever."

I asked him if he anticipated any profits from that, [229] and he said, "None whatsoever."

I told him that I had examined the certified copy of the Articles of Incorporation that were filed in the office of the County Clerk of Los Angeles County, and he said he thought he had signed them.

He said the corporation was organized for the purpose of a land development near Palmdale.

Mr. Granger: I object to any further continuance of that answer on the ground that it has been gone into, and moreover, the conversation was out

(Testimony of Carl W. Minton, Sr.)

of the presence of the bankrupt or anyone interested in this transaction.

The Referee: Your objection is overruled.

The purpose of the questioning is, I assume, to impeach Mr. Bloom as a witness.

Q. (By Mr. Bartley): You may proceed, Mr. Minton.

A. He said the deal had fallen through; that had it not fallen through it might have been handled in a different manner, because he said it was going to be handled through Thornburg Manor, Incorporated.

I asked him if he was a present director of Pacific Palmdale Development Company, and he said no, that he had severed his connections with Pacific Palmdale, Incorporated.

I asked him when, and he asked me to wait a minute, that he wanted to examine his files; that he had a copy of the written resignation.

He came back and advised me over the telephone that he [230] had prepared the written resignation on the 12th, but that he had given oral notice some weeks before, and he supplemented the notice in writing on the 12th, and that he had Mrs. Hudson's acknowledgment in writing as to the receipt of his written resignation; that he had no interest in the company and never did have any interest in it as a corporation.

Mr. Bartley: No further questions.

Mr. Granger: No questions.

The Referee: You may step down.

Mr. Bartley: The Trustee will rest, your Honor.

Mr. Granger: The bankrupt rests. [231]

The Referee: The Court has carefully listened to the evidence in this case and examined the documents introduced, and in order to give both parties an opportunity to be fully heard, it has properly permitted much testimony to go in which should not have been included, but if the Court erred, it was in the interest of permitting a full and fair disclosure of both parties.

The Court has made allowances for any possible bias or prejudice on the part of Mr. Reeve and Mr. Minton. In fact, it appears to the Court that if you entirely ignore the testimony of Mr. Reeve and Mr. Minton and take the testimony which has been given by Mr. Hudson and Mr. Granger alone, that the conclusion is inescapable beyond a shadow of doubt that the Pacific Palmdale Development Company, and the preparation of the Articles of Incorporation in connection therewith, was originally intended to be used by Mr. Hudson in a real estate development transaction with Mr. Bloom, but that Mr. Bloom withdrew from that corporate setup, and that this hollow shell of a corporation, known as Pacific Palmdale Development Company, was used merely as a conduit or as an instrumentality to further the interests of Mr. Hudson, and to a lesser extent, the portion of the earnings which Mr. Granger, as his attorney, would receive for his legal services rendered in that connection.

The Court is also of the conclusion that the Pacific Palmdale Development Company was, on April 6, 1954, when it [232] was filed in the office of the Sec-

retary of State of California, and ever since has been, and now is, the alter ego of the bankrupt.

The Court is also of the opinion that the Pacific Palmdale Development Company was conceived and perpetrated as a scheme to defraud, cheat and wrong the creditors of Mr. Hudson who were in existence at the time, aggregating approximately $350,000.

The Court is further of the opinion that Mr. Granger had full knowledge of Mr. Hudson's financial involvements; that he was insolvent and unable to pay his creditors, and he actively aided and abetted and conspired with the bankrupt to bring about this fraudulent scheme and to defraud the creditors of the bankrupt.

It would be a shocking travesty upon justice if a man such as the bankrupt in this case could, in the latter part of March, 1954 or the early part of April, 1954, enter into negotiations for this joint venture and obtain a contract from the Commodity Credit Corporation on April 17, 1954, and on April 19, 1954, file a petition in bankruptcy. That joint venture was an agreement in effect between John Lucas Hudson, Sr. and the Lloyd R. Reeve, Incorporated.

All of the moneys which have accrued to date, and which may hereafter accrue under the contract of April 7, 1954, between Lloyd R. Reeve, Incorporated and Pacific Palmdale Development Company, a corporation, were and are the assets [233] of the bankrupt estate, and Mr. Merrill L. Granger did not have, and does not have, any right, title or interest therein or thereto.

Mr. Lloyd R. Reeve and the Lloyd R. Reeve, Incorporated, their agents, servants, attorneys, employees, and anyone acting for or on their behalf are restrained and enjoined, and let the record show as the Court is making this pronouncement that Mr. Lloyd R. Reeve and his attorney, Mr. Carl Minton, are in the courtroom, that they are restrained and enjoined from paying any money under this contract to anyone but the Trustee in Bankruptcy of this estate.

It is further ordered that Pacific Palmdale Development Company and John Lucas Hudson, Sr. and Merrill L. Granger and their agents, servants and employees, or anyone acting for or on their behalf, are restrained and enjoined from in any manner proceeding with that certain action entitled Pacific Palmdale Development Company against Lloyd R. Reeve, Incorporated, pending in the Superior Court of the State of California, in and for the County of Los Angeles, being No. 631,386, or from instituting any other suit based upon that contract.

It is further ordered that the Trustee in Bankruptcy may proceed with the pending action and be substituted as plaintiff therein, and proceed therewith, or the Trustee in Bankruptcy may dismiss that action and institute any new action or proceeding, plenary or summary, or for an [234] accounting of all moneys received by the bankrupt, the bankrupt's wife and the bankrupt's attorney, Merrill L. Granger, under or pursuant to said contract, and the Trustee in Bankruptcy may institute the necessary proceedings, plenary or summary, to compel the

bankrupt and his wife and his attorneys to make restitution to the bankrupt estate of all moneys had and received by them, or either of them, under and pursuant to the joint venture contract.

John Hudson Lucas, Sr. and Merrill E. Granger are directed to forthwith deliver, surrender and turn over to the Trustee in Bankruptcy all books, records and files ostensibly in the possession, custody or control of the Pacific Palmdale Development Company, which the Court has adjudged to be the alter ego of the bankrupt.

The attorney for the Trustee will prepare findings of fact and conclusions of law, and an order in accordance with District Court Rule No. 7.

[Endorsed]: Filed Dec. 29, 1955.

[Endorsed]: No. 15140. United States Court of Appeals for the Ninth Circuit. John Lucas Hudson, Sr., and Pacific-Palmdale Development Company, a Corporation, Appellants, vs. William A. Wylie, as Trustee in Bankruptcy of the Estate of John Lucas Hudson, Sr., Bankrupt, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: April 18, 1956.

Docketed: April 25, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

No. 15110

In the Matter of JOHN LUCAS HUDSON,
Bankrupt

APPELLANTS' STATEMENT OF POINTS RELIED UPON ON APPEAL AND DESIGNATION OF RECORD ON APPEAL

To the Honorable Justices of the United States Circuit Court of Appeals, in and for the Ninth Circuit:

The Appellants, John Lucas Hudson and Pacific Palmdale Development Company, a corporation rely upon the following points on this appeal:

1. The Trustee's Petition to Require Bankrupt to Account does not contain allegations sufficient to entitle trustee to relief requested.

2. The Appellate Court is not bound by the trial Court's Findings of Fact because (a) there is no conflict on the essential features of the evidence and (b) the Findings of Fact were made under a clearly mistaken concept of the law.

3. The bankrupt's earnings, being only for his personal services, were lawfully subject to his contract, if not earned at the time of the filing of his Petition in Bankruptcy and adjudication.

4. The bankrupt's earnings were lawfully subject to his contract and were not a part of his

bankruptcy estate, because (a) the services personally performed by the bankrupt are not divisible into their proportions which were performed before and after the filing of his Petition and adjudication, most of them having been performed thereafter, and (b) the compensation for such services was not divisible into any proportions of the whole which represented services performed prior to the filing of his petition in bankruptcy and adjudication, and services performed subsequently thereto, and (c) at the time of the filing of his petition in bankruptcy and adjudication, the fund from which his earnings were to be paid had not been earned and was not existent.

5. Inasmuch as the only contribution of appellants to the joint venture with Lloyd R. Reeve, Incorporated, consisted of the personal services of the bankrupt, compensation for such services at all times prior to and at the filing of his petition in bankruptcy and adjudication were future wages not assignable to his bankruptcy estate or trustee, and did not pass to them.

6. An honest debtor who has assigned his assets to his creditors, is not guilty of defrauding, delaying or hindering any of such creditors, by contemplating the benefits of the bankruptcy act and a discharge thereunder, and contracting with reference to earnings subsequently earned after adjudication in bankruptcy.

7. The bankrupt did not conspire to nor did he defraud, delay or hinder his creditors.

8. Pacific-Palmdale Development Company, a

corporation, was not the corporate alter ego of the bankrupt.

9. A corporate alter ego is not of itself fraudulent but is a common and honest business practice, and the propriety of its organization and functioning cannot be inquired into when there is no fraud to be relieved by application of the doctrine.

10. When circumstances are as consistent with honesty and fair dealing as with dishonesty and fraud, the finding must sustain the claim of honesty and fair dealing.

11. There was no oral contract between either of the appellants and Lloyd R. Reeve, Incorporated for the mere procurement of a contract from Commodity Credit Corporation as all prior negotiations between the parties were merged into the written agreement, Trustee's Exhibit No. 1, providing for procurement and performance of a contract from said Commodity Credit Corporation.

12. That Findings of Fact VII, XXIII, XXIV, XXV, XXX, XXXIII, XXXIX, XL, XLVI, XLVII, and XLVIII are contrary to and not supported by the evidence.

13. The Findings of Fact should have contained but did not contain findings of the following facts:

a. That Philip Bloom acted on behalf of appellant corporation as late as April 20th, 1954.

b. That at all times mentioned in this proceedings the bankrupt was a married man, living with his wife in California.

c. That the only thing provided by appellants or either of them under said agreement, Trustee's Ex-

hibit No. 1, consisted of the personal services of the bankrupt.

d. Said personal services of the bankrupt were to be and were performed both before and after his adjudication on April 19th, 1954.

e. The personal services of the bankrupt performed under said Trustee's Exhibit No. 1 were not reasonably divisible into their proportions which were performed before and after April 19, 1954.

f. At the time of the filing of his petition in bankruptcy and adjudication herein the bankrupt had no interest in any existing fund accruing under or on account of his personal services performed under said Trustee's Exhibit No. 1.

g. A substantial portion of those services performed by the bankrupt under said Trustee's Exhibit No. 1 was performed after April 19th, 1954.

h. Blanche V. Hudson, the wife of the bankrupt, never consented to any assignment by him of any compensation to be paid him on account of his personal services to be performed under Trustee's Exhibit No. 1.

14. That all conclusions of law except V and XII are contrary to law and the evidence.

15. That the order of the District Court made February 8, 1956 and filed and entered February 9, 1956 confirming the decision and Order of the referee made and entered December 6, 1955 is not supported by and is contrary to the evidence and is against the law.

Designation of Record to be Printed

The appellants, John Lucas Hudson, the bankrupt herein and Pacific-Palmdale Development Company, a corporation, designate the following to be printed as the record on appeal in this cause:

a. All items referred to in the Certificate By Clerk of the United States District Court dated April 17th, 1956, including

b. Trustee's Exhibits 1, 2 and 3 and Respondents' Exhibits A, C, D, E, F, G, H, I and J, and also including,

c. Transcript of evidence prepared by Reporter Yoshiye Yamada covering proceedings on September 14, 1955 and Transcript of evidence prepared by Reporter Louis Sommers covering proceedings on September 19th, 1955 and on September 22nd, 1955.

Dated: April 23rd, 1956.

/s/ MERRILL L. GRANGER
Attorney for Appellants.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed April 25, 1956, Paul P. O'Brien, Clerk.

Office - Supreme Court, U.S.
FILED
JUL 10 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1957

No. [redacted] 263

JOHN LUCAS HUDSON, SR., and PACIFIC PALMDALE DEVELOPMENT COMPANY, a corporation,

Petitioners,

vs.

WILLIAM A. WYLIE, as Trustee in Bankruptcy of the Estate of John Lucas Hudson, Sr., a bankrupt,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

W. BLAIR GIBBENS and
MERRILL L. GRANGER,
1032 Wilshire Boulevard,
Santa Monica, California,
Counsel for Petitioners.

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IN THE

Supreme Court of the United States

October Term, 1957

No. .....

JOHN LUCAS HUDSON, SR., and PACIFIC PALMDALE DEVELOPMENT COMPANY, a corporation,

Petitioners,

vs.

WILLIAM A. WYLIE, as Trustee in Bankruptcy of the Estate of John Lucas Hudson, Sr., a bankrupt,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above case on March 1, 1957, dated March 1, 1957.

Citation to Opinion Below.

The order of the District Court was without a reported opinion.

The opinion of the United States Court of Appeals is reported at 242 F. 2d p. 435.

Grounds for Invoking Jurisdiction.

The grounds for invoking the jurisdiction of the Supreme Court are (a) misstatement and misapplication of the federal rule in a bankruptcy matter and (b) misstatement and misapplication of California state rules with reference to wages, assignment thereof, corporate *alter ego* and fraud, tending to show a conflict in authorities subject to citation.

Order on Petition for Rehearing.

By order made April 11, 1957, Petitioners' Petition for Rehearing was denied.

Statutes Authorizing Review by Certiorari.

The jurisdiction of the Supreme Court for review of the judgment of the United States Court of Appeals is invoked under 11 U. S. C. Section 47(c) and 28 U. S. C. Section 1254(1).

Questions Presented on Review.

1. If a husband who has failed in business and made an assignment for the benefit of creditors without obtaining a release, states to his friend and attorney that he will personally work for a project, then undefined, which the attorney may later set up, and if the attorney forms a closed family corporation in which the debtor's wife, married son and the attorney are to participate; and if that corporation agrees with another corporation that the family corporation will provide the personal services of the debtor to the joint venture of the corporations in building grain bins for the government, and if before any employment contract is defined or made between debtor and the family corporation the debtor in anticipation of his future em-

ployment at his own expense spends 3 days in Washington D. C. aiding the other corporation in submitting a bid for a bin building contract, and if the debtor files a voluntary bankruptcy petition on April 19, 1954 and is at once adjudicated, and if on that day the other corporation (in the name of which the grain bin contract was bid) accepts the bin contract subject to a deposit of a performance bond within 10 days, and if on April 20, 1954 the bankrupt, yet anticipating an employment contract with the family corporation, embarks on the task of assisting with the grain bin contract, and if on April 20, 1954 the family corporation makes a written offer of employment to the debtor which he accepts within a few days, and if the debtor continues his personal service under the employment contract for more than 18 months, and if the debtor, by contract and treatment of both corporations, is to receive toward compensation for his services a sum up to the first $50,000.00 which the family corporation is to receive from the deal and if said family corporation is to receive one-half of the profit from the joint venture and that one-half under the evidence in the case does not equal $50,000.00, is debtor's trustee in bankruptcy entitled to the entire profit which the family corporation and or the bankrupt is to receive?

2. If, under the conditions set forth in the preceding question, the sums paid by the family corporation to the bankrupt were, prior to payment, subject to process at the instance of any creditor entitled thereto, and if payments to be made by such family corporation to the debtor were also subject to any process by a creditor of the debtor entitled to same, has any creditor of the debtor been delayed, hindered or defrauded as to any demand he has against debtor?

3. Is a debtor's plan for his financial rehabilitation debased merely because he anticipates the benefits of the bankruptcy act by postponing the formulation of an expected employment agreement until after he has been adjudicated a bankrupt?

Statutes Involved on the Case.

One statute involved in this case is Article #300, Chapter 2, Division 1, Part 1, Volume 1 of Deering's Labor Code of California which provides:

> "No assignment of or order for wages or salary earned or to be earned shall be valid unless: (b) Where such assignment of or order for wages or salary is made by a married person, the written consent of the husband or wife of the person making the assignment is attached to such assignment or order; and
>
> "No assignment of or order for wages or salary shall be valid unless at the time of the making thereof such wages or salary have been earned, except for the necessities of life and then only to the person or persons furnishings such necessities of life directly and then only for the amount needed to furnish such necessities."

Another statute involved is Section 158 of the Civil Code of California which provides:

> "Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried; subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the title on trusts."

Statement of Facts.

John Lucas Hudson, Sr., experienced in construction, failed in business and assigned his assets of about $100,000.00 in value for the benefit of creditors without exacting or receiving a release. He was married and Mrs. Hudson, untrained otherwise, had assisted him extensively in various phases of his work. Merrill L. Granger, an attorney and friend of the debtor, obtained his indefinite pledge of future services for some project to be worked out and later organized petitioning corporation as a closed corporation with Mrs. Hudson, Granger and one Philip Bloom, a construction man, and also a family friend, as incorporators, planning, with outside financing to build residential construction at Palmdale, California. While the Palmdale project was being negotiated, Granger, in response to an earlier request by him, received from Commodity Credit Corporation an invitation to bid on the fabrication and erection of grain bins in the midwest. From then on the Palmdale project faded from consideration and the bin deal was emphasized, Bloom withdrawing from the corporate structure where he was replaced by William Hudson, a son of debtor who often acted as a superintendent for his father. About April 2, 1954 financing of the bin deal was sought from Reeve, Incorporated and on April 7th a written agreement was made between the two corporations by which petitioning corporation agreed to supply to the bin project the personal services of the debtor, for which it was to receive one-half the profits. About April 9th, Hudson and Reeve, who were back at Washington for three days, submitted a bid in the name of Reeve, Inc. and returned to their homes in the Los Angeles area. On April 19th,

Reeve, Inc. had received a conditional acceptance of its bid which it accepted and thus obtained the bin contract subject to its deposit of performance bond within 10 days. On April 19, 1954, petitioner, Hudson, filed his voluntary petition in bankruptcy and was adjudicated. On April 20th, Hudson, without a definite contract with petitioning corporation, left for Sacramento where he was busy for several days setting up a fabricating facility, returning then to Los Angeles where he aided Reeve, Inc. in obtaining a performance bond which was later filed in time. On April 20th, petitioning corporation made its written offer to the bankrupt for his personal services for the bin deal whereby he was to receive the first $50,000.00 of its profit, after which it was to receive the next $50,000.00 after which the profits were to be divided equally between Hudson and it. The bin deal earned less than $100,000.00 of which about $40,000.00 was distributed and the balance is in litigation. The bankrupt was to receive his first $50,000.00 without any deduction by the corporation for its officers or owners and the $20,000.00 paid it was paid to Hudson on this basis.

On an order to show cause the district court held the whole transaction between petitioners to have been conceived in fraud of creditors of the bankrupt and awarded to the trustee all future distribution of earnings and established the trusee's demand agains the bankrupt for all funds earlier received by him. The United States Court of Appeals affirmed the District Court and denied a petition for rehearing. Bankrupt and said family corporation prosecute this petition for a writ of certiorari to review the judgment of Court of Appeals.

Basis of Jurisdiction of Court of First Instance.

This is a bankruptcy matter and the District Court had jurisdiction under the provisions of 11 U. S. C. Chapter 1, Section 1(10) and Chapter 2, Section 11(a).

Argument for Allowance of the Writ.

This case arose in California before a Referee in bankruptcy on an order to show cause in a summary proceedings. It appeared that the bankrupt had spent three days prior to adjudication in assisting Reeve, Inc. to "procure" from the government a contract to fabricate and erect wooden grain bins in the midwest. The bankrupt spent about 18 months after adjudication in assisting Reeve, Inc. in "performance" of that contract, for which he was to receive a percentage of the profit at times when the parties thought it wise to determine and divide any profit. The Referee had qualified as such on the Friday preceding the Wednesday when the hearing started. His calendar was made up by a transfer of matters from the calendar of another referee. With an eagerness to aid creditors which was so avid as to wholly overlook the rights of the bankrupt the Referee determined a fraud which never existed nor was inferable from the evidence and awarded to the trustee the entire compensation, even ordering that the parties having divided $40.000.00 of profits, the bankrupt owed his estate the approximate $20,000.00 he received in such division.

The United States Court of Appeals affirmed the judgment of the District Court but in doing so compounded the errors of the referee by an opinion which should not be permitted to stand as the declaration of the viewpoints of a Court so highly constituted. That opinion misquotes plain provisions of state and federal case and statutory

law, ignores and does not determine material issues which would exonerate the bankrupt from any suggestion of fraud, strains at illogical inferences from the evidence while rejecting normal inferences and formulates definitions for terms contrary to judicial and dictionary recitals. The errors are easily demonstrable.

The origin of the Referee's error is readily detected in his failure to recognize the attitude of State law which is clearly stated in *Gray v. Perlis*, 76 Cal. App. 511, 245 Pac. 221. Perlis was a ladies' tailor and failed in business. His wife, with about $250.00 raised from jewelry belonging to her separate estate (California being a community property state), carried on a ladies' tailoring business, even using therein a sewing machine and motor belonging to her husband. He devoted his entire service to the business receiving no compensation, though the wife provided his living expenses. After about 4 years of operation, the wife had saved over $2,000.00 in her bank account, plus about $900.00 in her account as trustee for her children. The husband filed a voluntary petition and was adjudicated bankrupt. Gray, his trustee, sought to recover the cash in the accounts for the bankruptcy estate, claiming that the wife's appearance in the affair was a mere "cloak and screen" to isolate the husband's past earnings from his creditors. The claim was denied and the court declared that a debtor is under no obligation to work for pay; that the creditors had no lien upon debtor's labor nor any way to compel him to work and that a donation of his services was not inconsistent with his obligations to his creditors. In this case it is to be noted that the bank accounts had been accumulated prior to adjudication and it was not fraudulent of the debtor to *give* his services to his wife.

The federal rule as to earnings *after* adjudication is clearly stated in *In re Leibowitt*, 93 Fed. 2d 333, where this Supreme Court denied a writ of certiorari and the United States Court of Appeals, 3rd Circuit, stated:

> "It is the undoubted policy of the Bankruptcy Act (11 U. S. C. A., Art. 1 *et seq.*), and it is a truly salutary one, that wages earned by a bankrupt after his adjudication become his absolute property."

Let us consider the substantial evidence which is subject to these rules of law. In July, 1953, the bankrupt and his wife entered into a written and recorded agreement whereby she could enter business and her earnings would be her separate property. [Rep. Ex. C; R. pp. 223, 224.] Of such a transaction the California law was stated in *Gray v. Perlis, supra*, to be that a husband may relinquish to a wife the right to her earnings without any consideration other than their mutual consent and that such earnings thereupon become her separate property free of the claims of her husband's creditors.

Mrs. Hudson could now lawfully identify herself with a business venture and her profits would not be available to his creditors. The arrangement also permitted Mrs. Hudson to lawfully contract with her husband as to his future services, free of any complaint by his existing creditors because the subject matter would be, not past services, but future services as to which no creditor had any right.

Sometime after Hudson's failure, Granger, an attorney for and friend of the Hudson family, sought and obtained from debtor his statement that if Granger set up some project in which debtor's services could be used, Granger could expect such services to be available, but this com-

mitment was without any specification of the time when or conditions under which such services would be performed. This pledge to Granger was also lawful, because again its subject was debtor's future services which were as free of creditors' demands as would be a homestead, exempt wages or property. [R. pp. 193, 233.]

Thereafter, Granger organized with Mrs. Hudson and one Philip Bloom, a construction contractor, the petitioning corporation. [Resp. Ex. 1.] Incorporation was effected April 6, 1954. [R. p. 267.] On April 7th it entered into agreemnt with Reeve, Incorporated, agreeing to supply Hudson's services to a grain bin deal under the 1954 grain bin building program, in return for one-half the profit. [Tr. Ex. 1.] At the time Exhibit 1 was signed, Hudson and Reeve were in Washington where they remained for three days preparing a bid to be submitted by Reeve, Incorporated, for a contract to make and erect bins.

Hudson's trip to Washington at that time was at his own expense and without any agreement with anyone as to receiving pay for it. [R. pp. 351-352.] As Mr. Hudson's trip originated from California the rule of *Gray v. Perlis, supra*, would apply, and it could only follow that his services at that time were a donation that could not be of interest to his creditors. [R. pp. 201-202.] The situation as to debtor's employment remained at this point until after his adjudication. On April 19, 1954, Reeve, Incorporated, accepted a contract to build the bins, but because it was subject to the deposit of a performance bond, the bin contract did not really exist until the bond was deposited sometime after April 28, 1954. [R. p. 225.] The deposit of a performance bond, though subsequent in form is precedent in effect.

See:

Restatement of Law of Contracts, p. 45, Sec 38(a) and p. 66, Sec. 60, also

Flynn v. Dougherty, 3 Cal. Unrep. 412, 26 Pac. 831, 832, and

Williston on Contracts, Rev. Ed., Vol. 3, p. 1917, Sec. 667-A.

The bankrupt was adjudicated on April 19, 1954. He had no asset subject to scheduling which related to his future services because (a) Reeve, Inc., had no firm contract with the government for the bins until it deposited its performance bond (after April 28) and (b) Hudson had yet made no contract with anyone defining his obligation for services and the compensation for them.

On April 20, 1954, Hudson left for Sacramento to set up a facility for the manufacture of the bins. On April 20th the petitioning corporation made its written offer to Hudson for his services which he received at Sacramento but did not sign until his return to the Los Angeles area about May 3, 1954. [R. pp. 199-200.] It might be that under proper evidence, Hudson's services could be held recompensable on and after the corporation's offer of April 20, 1954, but under the evidence in this record it was not recompensable until after May 3, and in either event it did not accrue until after adjudication and could not belong to his creditors.

A man's service, after adjudication, belongs to him. It is when that service is rendered under a continuing contract which also blankets a service performed before adjudication, that difficulty arises in making a proper award of the compensation. Treatment of the problem

has evolved the rule, declared in *In re Leibowitt, supra,* which says:

> "It is true that a substantial portion of the services creating the obligation for compensation were rendered prior to adjudication but it is clearly stated by the referee 'there is no way of separating the compensation for what is done (by the bankrupt) before and what is done after adjudication.' Since the productive elements of the bankrupt's labor are inseparable in period of time, we hold that no contract rights therein can be deemed to pass to his trustee."

Trustee's counsel had known for four months of the circumstances involved in this case before having the order to show cause issued. [R. p. 263.] Such counsel are learned in the bankruptcy law and skilled in its practice. In an effort to avoid the rules of *Gray v. Perlis, supra,* the trustee sought to have the court hold that this petitioning corporation was but the corporate *alter ego* of the bankrupt, the result of which would be that the bankrupt had a contract for his services with Reeve, Inc., since April 7, 1954, and the debtor having assisted in Washington, D. C. on the "procurement" of the bin contract, any compensation for that service would belong to the trustee if he could show the employment contract to be separable. Trustee's attorney in furtherance of this plan, in open court stated:

> ". . . . it is highly relevant to the determination by this Court as to what percentage was procurement. . . . . It is the contention of the trustee that the contract was procured entirely before the filing of the petition. At least that portion of the contract that was fully performed and the amount

due for the procurement of the contract was an asset of this estate. As to performance after this contract, this estate has no interest." [R. p. 85.]

The Referee did not understand the issue which the trustee was presenting. The trustee offered Reeve's opinion as to the percentage of total service which was directed toward procurement and when petitioners objected the evidence was excluded, but in a discussion of the question of proof, the Referee, not aware of the import of trustee's effort to divide the contract said "the paramount issue here is whether or not in fact this corporation Palmdale Pacific Development Company, was not in fact the *alter ego* of the bankrupt. In other words, if the corporation was his *alter ego* and it is one and indivisible, it does not make any difference whether he did or did not perform or devote himself to the joint enterprise." [R. p. 90.] Witness Reeve testified he could not make the division. [R. p. 94.] Later the trustee again sought to prove the divisibility and explained the importance of such division when the Referee stated: "Now what difference does it make how much percentage of each man was devoted to procurement and how much to production? The Court does not understand what you are getting at . . . ." [R. p. 126.] Earlier, after trustee's counsel had carefully explained the object of his questioning, the Referee again stated: "The Court is a little uncertain by what you mean by your explanation in view of the testimony of this witness that he and Mr. Hudson and others journeyed to Washington, stayed at the Statler Hotel there and used their joint endeavors to procure the contract." [R. p. 125.] Trustee's counsel asked witness Reeve this question: "Mr. Reeve, in the services to be per-

formed by Mr. Hudson as furnished to Lloyd R. Reeve, Inc., under this contract of April 7, 1954, to the best of your ability can you estimate what portion of the services of Mr. Hudson were performed in procuring contracts and what percentage in the performance of the contracts after procurement." [R. p. 124.] Counsel then made a clear statement of what he intended to prove by the evidence sought, thereupon the Referee askd: "Now what are you trying to prove by your last question?" [R. p. 125.]

Separability of the contract was never shown, but the Referee, feeling that the bankrupt and his attorney had unlawfully schemed to defraud creditors, held them guilty of conspiracy and awarded all of petitioners' share of the grain bin deal profit to the trustee.

Petitioners urge that because the bankrupt had no employment agreement prior to his adjudication which could possibly show any determinable sum due, and because all transactions with him were looking toward his future earnings and not at all to any accumulated asset the Referee was in error in finding a fraud which did not exist.

There is another reason why it is impossible to justly find fraud under this record: petitioners' total returns from the grain bin project would be less than $50,000.00 [R. p. 95.] Hudson's employment agreement with petitioning corporation was for the first $50,000.00 of profit it received without deduction for any salaries or benefits to owners of the corporation. [See Ex. D.] Inasmuch as this was a sum acknowledged to be owing to the bankrupt, it was at all times as available to Hudson's creditors properly holding process as it would have been had it been owing directly to Hudson as an employee by

Reeve, Inc. as an employer. If always so subject to proper process of creditors, their demands were never postponed and they were not defrauded, delayed or hindered as to their claims. Unless a fraud, even had one been intended, actually exists, it is not actionable.

Yet another reason exists as to why fraud cannot be found on this record. Assuming petitioning corporation to be the *alter ego* of the bankrupt, he was under contract to render his services to Reeve, Inc., for 50% of the profit of the bin deal. In *Reynolds v. Reynolds*, 14 Cal. App. 2d 481, 58 P. 2d 660, it was said:

> "Be that as may, a fee is compensation and compensation is salary."

Again, quoting from *Kirkwood v. Soto*, 87 Cal. 394, the Court further said:

> "The words 'compensation' and 'salary' were evidently used synonymously in the Constitution and the County Government Act . . . 'Wages' and 'salary' as here employed are comprehensive terms and must be interpreted in their broader sense to mean compensation for services, whether such compensation is limited to a fixed sum of money or is payable in fees."

In *United States v. Gerdel*, 103 Fed. Supp. 635, 638, it is stated:

> "California decisions hold that the modern statutory usage of the word 'salary' is intended to embrace all forms of compensation."

Under such rule, Hudson's pay is subject to the labor laws of California. Section 300, Labor Code of California, set out verbatim in its applicable provisions, *supra*, holds that such earnings cannot be assigned unless earned.

Hence they could not pass to the trustee unless earned at the time of adjudication. But the employment contract Exhibit 1, is a continuing contract and Hudson performed 18 months of service in "performance" after his adjudication.

Under the rule of *In re Leibowitt, supra*, the trustee can recover no portion of the compensation for such service unless the contract is separable. The contract is the best evidence of its inseparability, in that the *Leibowitt* case, *supra*, says:

> ". . . one need only examine the sections of his contract of employment in order to see that substantial service must be rendered by the bankrupt in order that the compensation referred to may become payable by the insurance company."

As we have seen, Witness Reeve, who was the only one questioned by the trustee on the subject, said he could not make a division of the contract and it was never done by any other evidence. Under such state of the record it would seem proper to award the entire compensation to the bankrupt (assuming a fair finding of corporate *alter ego*, or send the case back for additional evidence, if any is possible, on separability.)

In conclusion, petitioners would point out briefly certain features of the opinion of the Court of Appeals that should not be permitted to stand:

1. While the opinion in *In re Leibowitt, supra*, is clearly to the point that the Bankruptcy law cuts across any opposing state law in order to assure a bankrupt the fruit of his earnings after adjudication, the subject opinion states:

> "The court there pointed out that regardless of the law of the state of domicile the provisions of the

> Bankruptcy Act cut across state law, and that the right to collect money in the future is such right as will pass to the trustee whether or not capable of being assigned under state law."

This is a serious misreading of the *Leibowitt* decision and expresses a rule which is non-existent in law and wholly opposed to the philosophy of the Bankruptcy Act.

2. The opinion quotes at length from the case of *Cox v. Hughes*, 10 Cal. App. 553, 102 Pac. 956, to the effect that if employment exists, the wages to be earned under such employment may be assigned. Of this statement of the rule, the subject opinion says:

> ". . . which we take to still be the law."

Cox v. Hughes, supra, does not state the current law in California on assignability of wages. The law was completely rewritten about 1940 and adopted into Section 300 of the Labor Code, *supra*. The present rule is that no wages shall be assigned unless earned at the time, and also consented to by the wife of a married debtor. Hudson was married. [R. pp. 203, 206.] *Lande v. Jurisich*, 59 Cal. App. 2d 616-619, affirms the rule of the statute and states that the Labor Law is a remedial statute and must be liberally construed to protect the wage earner.

3. Against plain recitals of the agreement, Exhibit 1, and with no other evidence on the matter, the subject opinion explicitly holds the contract separable. A court should not purport to make for the parties a contract they did not make for themselves or treat as made. The opinion says it is clear that Hudsoin's work was done in "procurement" and his effort in "performance" was of little consequence in that it was mostly consultive. Such an inference is utterly unreasonable. Witness Reeve testi-

fied Hudson helped him in the "performance" of the bin contract, not only in a consultive capacity but also by effort at Sacramento. [R. p. 94.] Hudson testified that while at Sacramento (after adjudication), he set up the fabrication facility [R. p. 225], including the purchase of about $50,000.00 of materials and the employment of key personnel. [R. p. 343.] No one but Reeve and Hudson testified on these matters and in these respects their testimony agrees. Neither has been impeached. It is a simple rule of evidence that a court cannot ignore unimpeached testimony which is not contradicted. Hudson's work, after adjudication, was necessary to the creation of the fund from which his pay was to come and he is entitled to all his earnings under the *Leibowitt* rule, even though petitioning corporation were his *alter ego*.

4. The subject opinion states:

> "It is to be noted that the parties themselves treated Hudson's performance as having been virtually completed, for the first payment received from the Commodity Credit Corporation was divided equally between Reeve and Hudson, thus indicating that at the time of procurement of the contract through Hudson's 'know-how,' he, Hudson, had become entitled to a one-half share of the profits without anything further to be done on his part."

The reasoning in such statement is completely illogical, also not premised on facts shown by the record. The first payment from Commodity Credit was $100,000.00 but the distribution was related not to that $100,000.00 but to the profits determinable. Distribution was made equally, $15,000.00 to Reeve and the same amount to petitioners at one time. [R. p. 151.] On the face of that record, Mr. Hudson was no more through with his work under

the venture than was Reeve who took a like amount at the same time in the same calculation, all done under the contractual provision for a division of the profits. The opinion also utterly overlooks the fact that a second distribution of $5,000.00 was later made and that there is about $46,000.00 still on hand [R. p. 95], subject to division.

5. The subject opinion did not respond to an issue presented to the court by petitioners which, in good thinking, could only be resolved by reversing the ultimate conclusions of that opinion. In this argument we have said that there could be no actionable fraud if there is no damage .

See:

Gonsalves v. Hodgson, 38 Cal. 2d 91, 237 P. 2d 656;

Tsang v. Kan, 78 Cal. App. 2d 275, 177 P. 2d 630;

Dabney v. Levy, 191 F. 2d 201.

In that all that was coming to petitioning corporation from Reeve, Inc., was in turn owing by it to Hudson, in his own name, it was at all times subject to process properly in the hands of any Hudson creditor, whose claim, therefore, could not have been postponed and who was not delayed, hindered or defrauded. There was not a single cent of the bin deal profits as established by the evidence in this case, which was held or claimed by Pacific Palmdale Development Company *adversely* to the bankrupt. Such claim must be adverse to be fraudulent.

See:

Sampsell v. Imperial Paper & Color Corp., 313 U. S. 215.

The subject opinion did not meet the argument by an analysis of the facts.

6. The subject opinion holds that, petitioning corporation being the *alter ego* of the bankrupt, he had a contract with Reeve, Inc., which called for one-half the profit and this was not wages, explaining the basis for such conclusion was that the contract

> ". . . was one for the contribution of skills and experience, and not for labor or personal services as the expression is ordinarily used."

Such reasoning is illogical and wholly out of line with the evidence and normal human experience. In the first place the contract, Exhibit 1, calls for Hudson's personal "services." How can the court reasonably go beyond that simple phrasing, when the parties themselves treated, accepted and abided by the ordinary meaning of the words. And in the second place is it not the most usual thing in ordinary daily living that the reward for a contribution of "skills and experience" is by way of "salary" and "wages?" Reeve's participation was "profit" because he invested money as well as skill and experience and Webster's Collegiate Dictionary, Fifth Edition, defines "profits" as "excess of returns over expenditures." But Hudson invested no money, nothing but services and as we have seen this was in supervising the organization of the fabrication facility at Sacramento, directing the purchase of materials and assisting in management by consulting with Reeve. This type of effort is often rewarded by a salary or wage. As we have seen, California law regards these terms as synonymous, and that both are to be applied to the compensation for "services." Additionally, the dictionary, under the division of Theoretical

Economics says the term "wages" includes "wages of management or superintendence which are earned in directing the work of others." There is no warrant whatever, under formal dictionary definitions, California law or normal acceptance of the meaning of the words, to hold that compensation for skill and experience is "profit" and cannot be "wages" or "salary."

7. The subject opinion handles the subject of procedural estoppel in an inexplicable manner. Petitioners claimed that the trustee, assuming the burden of showing the separability of the contract, Exhibit 1, had not met that burden. The record shows that the trustee's only offer of evidence on the question of separability other than the contract itself, was the opinion of witness Reeve, who said the bankrupt had not discussed the percentage of his effort toward procurement as distinguished from his effort in performance. [R. p. 130.] Petitioners objected many times to any offer of Reeve's opinion on separability and such opinion was never received. The subject opinion holds that petitioners, by causing such evidence to be excluded cannot now complain because the separation was never made, and are estopped under the familiar doctrine that one cannot complain if, by his objection at trial, he brings about a ruling that prevents his opponent from proving his case. The opinion cites several cases in support of the rule. Petitioners have no complaint with *a correct statement* of the rule. The estoppel follows when the party has *induced* the error of which he complains and its rule is well expressed in *Missouri I & T Ry. Co. v. Elliott*, 102 Fed. 96, 103, and *Kelso v. Slosburh*, 120 Cal. App. 479, 8 P. 2d 158. But the point that the Court of Appeals has completely overlooked is that the exclusion of Reeve's *opinion* of the

separability was a correct and not an erroneous ruling. If a litigant is to be estopped on appeal from complaining because he brought about the exclusion of erroneous evidence on trial, the result could be farcial, in that in losing a case where *only* incompetent evidence was offered at trial, the appellant finds himself estopped to claim his opponents case was not properly proved. It is certainly not the fault of these litigants that the trustee could not offer or did not offer competent evidence on separability. Perhaps no such competent evidence exists. At any event, the authorities are to the effect that the estoppel arises when appellant's objections to *competent* evidence have induced the error below. How is it possible for these petitioners to have been estopped when their only objection was to Reeve's *opinion* (he not qualifying, if possible at all, as an expert), and petitioners, at trial, stated in open court as follows:

> "I would forego my objections to the competency of the witness if effort were made to establish these points: What did Mr. Hudson do? What time did he put in? What trips did he make? What was his effort? What hours did he put in on the procurement of the contract? I think perhaps Mr. Reeve could testify competently to that within the limits of his knowledge—Beyond that, we are faced with the bald question of whether or not, under a contract like this, procurement and performance are at all divisible."

and trustee's counsel then said

> "I will reserve the question and do as Mr. Granger suggests." [R. pp. 89-90.]

It is urged that the trustee's reservation of the question at that time rendered unnecessary *any* ruling by the Referee, correct or erroneous, removing any basis for estoppel, even had the evidence been competent. The trustee never again offered anything but Reeve's opinion on separability. [R. pp. 123-128.]

The subject opinion, in finding the estoppel, failed to show any point at which petitioners induced the rejection of any *competent* evidence on separability.

It is respectfully urged that because of the foregoing reasons the writ should issue.

Respectfully submitted,

W. BLAIR GIBBENS and
MERRILL L. GRANGER,
Counsel for Petitioners.

APPENDIX.

Opinion of the United States Court of Appeals

United States Court of Appeals for the Ninth Circuit.

John Lucas Hudson, Sr. and Pacific-Palmdale Development Company, a corporation, Appellants, vs. William A. Wylie, as Trustee in Bankruptcy of the Estate of John Lucas Hudson, Sr., a bankrupt, Appellee. No. 15,110, Mar. 1, 1957.

Appeal from the United States District Court for the Southern District of California, Central Division.

Before, BONE and BARNES, Circuit Judges, and Ross, District Judge.

Ross, District Judge.

This is an appeal from an order of the District Court, Southern District of California, Central Division, affirming on review Findings of Fact, Conclusions of Law, and Order of a Referee in Bankruptcy. This case has an interesting background.

To make this opinion understandable a somewhat lengthy statement of the case history must be given. John Lucas Hudson, Sr., filed a voluntary petition in bankruptcy on April 19th, 1954, and on that date was adjudged a bankrupt. He has at all times been represented in this bankruptcy matter by one Merrill L. Granger.

As the brain child of Hudson and Granger the Pacific Palmdale Development Company (hereinafter called "Palmdale") came into being after numerous conferences and discussions, the tenor of which were how to capitalize Hudson's capabilities, make some profitable deals, and at the same time protect the profits of the insolvent Hudson against his creditors.

Hudson was and is a skilled "mass production" builder in the construction field. Merrill L. Granger, who represents Hudson in this matter, as well as the pending bankruptcy, is one of the actors. Granger is an attorney with considerable experience in the "insolvency" and bankruptcy field of law. He had in years past represented members of the Hudson family, and prior to the immediate events appeared to be family counsellor, without portfolio. He fully appreciated Hudson's financial difficulties and was well aware of his capabilities as a building contractor. To use the vernacular both Hudson and Granger knew their way around. Having with his foreword set the stage we will present sufficient of the factual background to give an appreciation of the more subtle points here involved.

For reasons unknown a former building venture "went sour" and Hudson found himself owing his creditors around $300,000.00, and in late 1953 or early 1954 he made an assignment of assets to his creditors which, so far as we can ascertain, amounted to little or nothing. The creditors did not release Hudson from his liabilities and obligations. Granger regretted to see his friend in such a situation, and as he testified—

"I did give him advice in connection with his relation to creditors at that time but it was after an affirmation, reaffirming of advice that I had earlier given him, probably very early in the year.

"It was mine (the idea for the creation of Pacific Palmdale Development Company), it took birth this way: It had come to my attention that Mr. Hudson had made an assignment for the benefit of creditors, and I had met him and he discussed the fact of his assignment, and

expressed some apprehension as to how he was going to get started in business again.

"At that time I told him that I would like to plan a method of exploiting his experience and his skills, and I wanted to know particularly then whether if I do so his services would be available to me in anything that I set up, and he said they would.

"That if he would undertake from his earnings, substantial earnings, to build some fund to use in financing his independent operations before he obtained a release from his creditors, or before he obtained a discharge in bankruptcy, the accumulation that he would make would be subject to their demands. That was reitrated to Mr. Hudson on occasion." (267)

The plans progressed, the first step being the preparation and execution of a "sole trader" agreement between Hudson and his wife permitting her to engage in the construction business and to retain the profits as her separate property. Mrs. Hudson, the record indicates, was a housewife, with no special skills.

Granger, under the nom de plume of Sierra Construction Company, wrote the Commodity Credit Corporation, and requested information on "grain bin" projects. It appears that in this specialized area Hudson was already particularly experienced, both in the methods required to obtain such a type of contract, and in the fabrication and erection of the bins themselves.

During this period, March, 1954, Granger hit upon the Palmdale area near San Diego in Southern California as an area where a mass building project might be undertaken. The matter was discussed between Hudson, Granger, and one Bloom, who was a friend of the family and

who was also interested in real estate and building. The three of them made several trips to Palmdale to look over possible building sites. During this period of time, March of 1954, the Pacific Palmdale Development Company, a corporation, was conceived and organized for the ostensible purpose of carrying on the Palmdale building venture. This was necessary to protect Hudson who by reason of his assignment to creditors, and insolvent condition could not openly participate in any venture that would return personal profits. As set-up the interests in the Palmdale Corporation were as follows: Hudson's wife 44%, Hudson's son 44%, Granger 12%. On April 3rd the articles were mailed to the Secretary of State and on April 6th the certificate of incorporation was issued. The corporation at no time issued any stock, had no property of funds, entered into no business transactions, and its existence was limited to and is important only in relation to the matter under discussion here, the joint venture agreement for the construction of the grain storage bins hereinafter more particularly explained.

At about this time Granger, as Sierra Construction Company, received in answer to his former inquiry, an invitation from the Commodity Credit Corporation to bid on the construction of certain grain storage bins in the mid-west. Interest was immediately transferred from the Palmdale venture to the grain bin deal. Also about this time, the contemplated building venture at Palmdale "washed out," and Bloom withdrew from the Pacific-Palmdale corporation, leaving only Hudson's wife, his son, and Granger.

Now to the (1) joint venture agreement, and (2) the contract with the Commodity Credit Corporation for the building of surplus grain storage bins. Having received

the invitation to bid Granger and Hudson were interested in "teaming up" with someone who might finance such a deal in the event it was possible to obtain such a contract.

On or about April 3, 1954, Hudson and one Lloyd Russell Reeve made contact. Reeve was a financially sound contractor. In the conversations that took place Hudson advised Reeve of his past experience and success in grain bin ventures, and presented the files of his former transactions with the Commodity Credit Corporation to back him up. Reeve had no experience in this field but became "sold" by Hudson. Thereupon the parties discussed a "joint venture" agreement, and for the first time Reeve learned of Pacific-Palmdale Development Corporation.

In the early part of April when the discussions concerning the grain bin deal and the joint venture were taking place Hudson advised Reeve that he, Hudson, was the company. The following is a portion of Reeve's testimony:

"Q. Did you discuss who the parties on the contract (joint venture) would be? A. No, it was about that time that the Pacific-Palmdale Development Corporation got into the picture, and I asked who they were.

Q. Who mentioned the Pacific-Palmdale Development Corporation? A. Mr. Hudson.

Q. What did he say in that connection? A. Well, he said something about the Pacific-Palmdale Company. I said who is the Pacific-Palmdale Development Company.

Q. What was his answer? A. To my best recollection he said that he was the Pacific-Palmdale Company, a corporation; that he had a Mr. Phil Bloom and a Mr.

Merrill Granger who was an attorney . . . Mr. Granger was an attorney and he was paying him 12½% of every cent he made in that capacity.

* * *

Q. Mr. Reeve, did at any time prior to the execution of this agreement, Mr. Hudson make any representation as to the ownership of the Pacific-Palmdale Development Company, as to who owned the company? A. Yes, he said he owned it . . . Well, the conversations regarding—concerning Mr. Hudson's ownership of the Pacific-Palmdale was the fact—if I have to say it, I will say it. It was that this Pacific Palmdale Development Company was a corporation that he had organized to benefit himself.

Q. Did he state that to you? A. Yes . . ."

* * *

"Q. What was the conversation which occurred between the two of you at that meeting of April 4th? A. That he (Hudson) wanted me to go ahead with him and finance the grain bin deal or this deal.

Q. Now in return for your services of financing, did Mr. Hudson agree to perform any services himself? A. Yes.

Q. And what did he say regarding that? A. Well, he had all the experience and he was going to put the experience into the deal, if I would finance it."

As a result of conversations between Reeve and Hudson a joint venture operation was blue printed, and became the finalized joint venture agreement entered into between Reeve, Inc. and Palmdale. During the discussions Hudson mentioned to Reeve that the joint venture agree-

ment would be with Pacific-Palmdale Development Corporation, that he (Hudson) was the company, that it was a corporation he had organized to protect himself. In the actual drafting of the agreement, Hudson, and/or Palmdale, was represented by Granger. It provided in part:

"That the availability of the said John L. Hudson by the party of the second part is one of the inducing considerations for the party of the first part (Reeve, Inc.) entering into this joint adventure . . . and the party of the second part (Palmdale) shall make available to the party of the first part the services of the said John L. Hudson for such time as may be reasonable and necessary to procure and perform any such contracts from the Commodity Credit Corporation."

Hudson and Reeve enplaned for Washington, D. C., the evening of April 6th, taking the drafted joint venture contract with them, which as yet neither had examined in final form. This was done in Washington the next day and Hudson conferred with Granger by phone concerning the same. Granger advised him to execute the agreement on behalf of Palmdale, as treasurer. The joint venture contract was accordingly executed by Hudson as treasurer of Palmdale, and Reeve as president of Reeve, Inc., on April 7th. Hudson and Reeve then spent several days in Washington working on the bid plans and specifications and on April 9th, a bid was filed with the Commodity Credit Corporation. This was prepared on Hudson's former experience in like contracts and under similar bidding conditions. Hudson and Reeve then immediately returned to California.

On April 6th, on the evening of which day Hudson and Reeve left for Washington, Granger forwarded the

previously executed articles of incorporation of Palmdale to the Secretary of State.

On April 9th or 10th immediately after Hudson's return from Washington, Granger began to prepare Hudson's petition in bankruptcy. It was filed on April 19th, and Hudson was adjudicated a bankrupt on that date, and listed creditors to the extent of $350,000.00. Reeve did not become aware of this until some time later. On April 20th the board of directors of Palmdale authorized the payment to Hudson of the first $50,000.00 to be received from the joint venture. Through a side agreement with Hudson, in addition to the 12% ownership in Palmdale corporation, Granger was to receive 12% of all moneys Hudson personally received.

On April 17th, two days prior to the filing of the petition in bankruptcy which was on the 19th, Commodity Credit Corporation conditionally accepted the joint venture grain bin bid. On April 19th, the day Hudson was adjucated a bankrupt the conditional acceptance was confirmed by the joint venture firm of Palmdale and Reeve, Inc.

The grain bin deal got under way and moneys were received by the joint venture association from the Commodity Credit Corporation. Out of the first $42,000.00 received $1,000.00 was paid outright to Hudson, ostensibly to cover the expense of his trip to Washington, and two subsequent payments of a total of $20,000.00 were also made to Hudson pursuant to resolutions of Palmdale's board of directors authorizing the same to be done.

Some time after this the trustee in the bankruptcy matter learned of the joint venture agreement and the grain bin deal with the Commodity Credit Corporation. Wylie, the trustee, then filed a petition with the referee in bank-

ruptcy requiring the bankrupt, Hudson, to account. The prayer asked that Hudson, the bankrupt, be required to show cause why the Referee should not enter an order (1) declaring and decreeing that Palmdale was the alter ego of Hudson; (2) that all profits realized under the contract of April 7, 1954, entered into by the joint venture association and Commodity Credit Corporation, were assets of the bankruptcy estate; (3) that the bankrupt, Hudson, pay over to the estate all sums of money which he had received as a result of the grain bin deal paid to him on the resolution of the board of directors of Palmdale; and (4) to restrain a suit then pending in the state court between Palmdale and Reeve, Inc. in which Palmdale was seeking an accounting as to further profits made in the deal. The Referee issued his order to show cause. Granger on behalf of Hudson and Palmdale filed an answer. The matter was heard by the Referee who entered his Findings of Fact (fifty-one in number), Conclusions of Law, and Order. Finding XLVII was to the following effect:

"That the aforementioned contract of April 7, 1954, (the contract of the joint venture association and the Commodity Credit Corporation), and the drafting thereof, were made and executed by and with the specific intent of the bankrupt, John Lucas Hudson, Sr., and his attorney, Merrill L. Granger, to hinder, delay, defraud, and cheat the creditors of John Lucas Hudson, Sr., with specific knowledge on the part of John Lucas Hudson, Sr., and Merrill L. Granger that the said contract of April 7, 1954, would have the effect to hinder, delay, defraud and cheat the creditors of John Lucas Hudson, Sr., and the said contract of April 7, 1954, did have the actual effect of hindering, delaying, defrauding and cheating the creditors of John Lucas Hudson, Sr."

The Referee drew fourteen Conclusions of Law from the Findings of Fact, concluding that Pacific-Palmdale Development Company at all time was "a hollow shell" controlled and dominated by Hudson "and is the alter ego of John Lucas Hudson, Sr.; that the contract between the Commodity Credit Corporation and the joint venture association was in fact a contract with Commodity Credit Corporation and Lloyd R. Reeve, Inc. and John Lucas Hudson, Sr.; that all moneys realized thereunder were the assets of the bankruptcy estate; that Palmdale was incorporated by Hudson and Granger with the 'specific intent' to hinder, delay, defraud and cheat Hudson's creditors, and to conceal assets from the creditors." Further—

". . . that there is such a unity of interest and ownership between the said John Lucas Hudson, Sr., and the Pacific Palmdale Development Company that the individuality or separateness of the said John Lucas Hudson, Sr. and the Pacific Palmdale Development Company has ceased to exist and the facts are such that an adherence to the fiction of the separate existence of the corporation would under the circumstances of this action sanction a fraud or promote an injustice, and it is hereby found that the Pacific Palmdale Development Company has no existence whatever separate and apart from John Lucas Hudson, Sr."

As a part of his Order the Referee held:

"It is further ordered that all assets arising by, under or by virtue of the contract of April 7, 1954, whether prior or future, are assets of this estate and that Philip Bloom, Blanche V. Hudson, William Hudson, the Pacific Palmdale Development Company and/or Merrill L. Granger have no right, title, and interest whatever in and to

the said assets. It is further ordered that John Lucas Hudson, Sr., the within bankrupt, is indebted to this estate in the sum of $21,000."

Granger, then, on behalf of Palmdale filed a petition for review of the Referee's Findings of Fact, Conclusions of Law, and Order; the Referee sent the record and this certificate of review up to the District Court, and on review the District Court entered its order affirming the Referee's Order of December 6, 1955. The present appeal is taken from the order of the District Court. We have now made full circle.

Under their "specifications of error" appellants assert that the Court erred in that Findings of Fact VII and XLVII are not supported by the evidence; that Findings of Fact XXIV, XLV, XLVI and XLVIII are contrary to and not supported by the evidence.

Based on a careful review of the entire record in this case we conclude that each and every of the Findings of Fact referred to are consistent with, and are supported by, the evidence, and that appellants' specification of errors numbered 1 to 7, inclusive, are without merit.

Specification of Error 8 to the effect that the court erred in not finding certain additional facts we also find to be without merit. Specification 9 holds that "each" of the Conclusions of Law except those numbered V and XII are against the law and the evidence. We hold that there is no merit to this specification.

Finally it is said, Specification 10, that the court erred in approving and confirming the Referee's decision of December 6, 1955. It is our opinion that the court's approval of the Referee's decision was proper and is supported by the record, and the law.

Appellee takes the position, and we think correctly, that the only issues here involved are two, namely:

1. Whether or not Pacific-Palmdale Development Company was the alter ego of the bankrupt, Hudson; and

2. Whether or not the assets earned under the contract of April 9, 1954, between Pacific-Palmdale Development Company and Lloyd R. Reeve, Inc., as joint adventurers, and Commodity Credit Corporation, are the assets of this bankrupt estate.

We take up first the problem of alter ego. Appellants urge that Pacific-Palmdale Development Company is not Hudson's alter ego; that no inquiry can be made into the question of corporate alter ego if no fraud or inequitable position is being shielded thereby; that there can be no actionable fraud without damage and creditors cannot be defrauded of that to which they are not entitled.

In our opinion the record fully supports appellee's position that Pacific Palmdale was organized solely for the purpose of defrauding the creditors of the bankrupt, Hudson. Having given a rather detailed resume of the evidence no further comment is necessary as to how or why we arrive at our conclusion. The record speaks for itself. It is quite apparent that the corporation was nothing more than a "front" through which Hudson might again engage in business permitting him to write off some $350,000.00 of indebtedness, and at the same time keep and enjoy all profits received behind the curtain of the sham corporation.

The record fully supports the proposition that the joint venture contract was not the work or labor but rather for the skill and experience possessed by Hudson; that this was the consideration for the joint venture agreement

which came into existence by the execution of the contract on April 7th, some twelve days prior to the adjudication in bankruptcy on April 19th, that the major and vital part of Hudson's skill, experience and services was directed to the preparation of the bid and the securing of the contract from the Commodity Credit Corporation, and was performed immediately prior to the time of the filing of the initial bid with the Commodity Credit Corporation on April 9th; that from there on out any experienced construction man might have successfully brought about the fabrication and actual construction of the grain storage bins. It is obvious that Pacific-Palmdale Development Corporation was and is the alter ego of Hudson; that as of April 19th, on which date Hudson was adjudicated a bankrupt, he had a vested interest in, was the real party in interest in the joint venture contract with Commodity Credit Corporation, and was entitled to share in the profits to be derived therefrom.

On the question of alter ego it was said in Katenkamp v. Superior Court, 16 Cal. 2 629, 700, 108 P 2 1, that it is not necessary that actual fraud be shown. It was sufficient if a refusal to recognize the fact of the identity of corporate existence with that of the individual would bring about inequitable results.

In Sampsell v. Imperial Paper & Color Corp., 313 U. S. 215, the Supreme Court had before it, in certiorari from the Ninth Circuit, a situation similar to the one presented here, a family corporation. In the course of its opinion the court said:

"Mere legal paraphernalia will not suffice to transfer into a substantial adverse claimant a corporation whose affairs are so closely assimilated to the affairs of the dominant stockholder that in substance it is little more

than his corporate pocket. Whatever the full reach of that rule may be, it is clear that a family corporation's adverse claim is merely colorable where, as in this case, the corporation is formed in order to continue the bankrupt's business; where the bankrupt remains in control, and where the effect of the transfer is to hinder, delay or defraud creditors. In re Schoenberg, 70 F 2 321; In re Berkowitz, 173 F 1013. Cf. Shapiro v. Wilgus, 287 U. S. 348."

In our case Hudson owned no stock in the corporation, none being issued. But it appears that his wife and son held an 88% ownership in the company.

The Weban Estate Case, 193 Cal. 675, 227 P 723, 31, has been cited many times, one of the more recent cases in which it is cited with approval, being Duarte et ux v. Postal Union Life Insurance Co., 75 Cal. App. 2 557, 171 P 2 574, 85:

"While it is the general rule that a corporation is an entity separate and distinct from its stockholders, with separate, distinct liabilities and obligations, nevertheless there is a well recognized and firmly settled exception to this general rule, that, when necessary to redress fraud, protect the rights of third persons, or prevent a palpable injustice, the law and equity will intervene and cast aside the legal fiction of independent corporate existence, as distinguished from those who hold and own the corporate capital stock, and deal with the corporation and stockholders as identical entities with identical duties and obligations.

Accordingly, it has been held that upon a sufficient showing that a corporation is but the instrumentality through which an individual, who is the sole owner of all

of the corporate capital stock, for convenience transacts his business equity, looking to the substance rather than the form of the relation, and the law as well, will hold such corporation obligated for the acts of the sole owner of the corporation to the same extent and just as he would be bound in the absence of the existence of the corporation."

In Marr v. Postal Union Life Insurance Co., 40 Cal. App. 2 673, 105 P 2 649, 654, the court said:

"While the fact standing alone that a corporation remains inchoate without stockholders or stock is not of itself determinative of an alter ego relationship upon its part, nevertheless it does indicate that such corporation may exist merely to serve the interests of another, a corporation or an individual. Shorb v. Beaudry, 56 Cal. 446; Clark v. Millsap, 197 Cal. 765, 779, 242 Pac. 918."

Appellants argue that the fund from which the bankrupt was to be paid for his services did not exist actually or potentially on April 19th, 1954; that wages may not be assigned when they are to be earned under a contract which is merely possible at the time of the assignment; that the earnings of the bankrupt in the grain bin deal were subject to his contract as his property and did not belong to his trustee in bankruptcy.

Our comment on the foregoing is as follows: The joint adventure agreement was one for the contribution of skills and experience, and not for labor or personal services as the expression is ordinarily used; that the contract with the Commodity Credit Corporation came into existence on April 17, or in any event on the 19th, on which date Hudson was not entitled to wages but had the right to participate in the profits of the joint venture; that on

April 17, or in any event not later than the 19th, on the date of his adjudication in bankruptcy, Hudson had a vested interest in the contract between the Commodity Credit Corporation and the joint venture association; that this was an assignable interest and pas to the trustee in bankruptcy for the benefit of the creditors; that Hudson's interest in such contract had, if not a fixed and liquidated value, an ascertainable and calculable value as of that date.

Wages, say appellants, may not be assigned when they are to be earned under a contract which is merely possible at the time of the assignment. We have answered this by finding that Hudson was not entitled to wages nor did the joint venture contract so provide. That contract, as we have said, was a profit sharing agreement between his alter ego, Palmdale, and Reeve, Inc. But in any event if the contract had been one for wages the law is that even a possibility of wages may be assigned when it is coupled with an interest. It is said in Cox v. Hughs, 10 Cal. App. 553, 102 Pac. 956, which we take to still be the law:

"The chance that A may be employed some time in the future by B, and thereby earn wages, is, of course, a mere possibility not coupled with an interest, and it does not possess the element of negotiability. But, if the employment already exists, the wages to be earned from such employment exists, the wages to be earned from such employment, although a mere possibility, is coupled with an interest in A, and therefore assignable under the code, and the authorities. The proposition is so obvious as to require no further exposition."

The assignment of claims for wages, if sharing in the profits of the joint venture could be deemed wages, is a

common practice. Walter v. Rich, 79 Cal. App. 139, 249 P 56; Silverstein v. Oakland Title Insurance & Guaranty Company, 122 Cal. App. 73, 9 P 2:846. So even if we assume here that the profits accruing from the grain bin contract with the Commodity Credit Corporation were wages, being coupled with an interest, they would be assignable.

It is asserted by appellants that no inquiry can be made into the question of corporate alter ego if no fraud or inequitable proposition is being shielded thereby. To that extent we will go, but the rule is hardly applicable here, where the entire plan conceived, dedicated, and put into operation by Hudson and his attorney Granger "scream fraud to the high heavens." In view of our general observations we need not dwell on this point.

Again, it is said that there can be no actionable fraud without damage and the creditors cannot be defrauded of that to which they are not entitled. In sustaining the finding of the Referee that Palmdale was the alter ego of Hudson we have demolished this contention, and it follows then that the creditors are entitled to the fruits of the joint venture, and being deprived thereof are being defrauded of that to which the law entitled them.

Appellants take the position that the earnings of the bankrupt, Hudson, were subject to his contract, as his property, and did not belong to his trustee in bankruptcy. Believing as we do that Palmdale was the alter ego of Hudson, that through it Hudson was entitled to share in the profits of the Commodity Credit Corporation, that this right accrued to him prior to or on the date of his adjudication in bankruptcy, that this right to share has a present and calculable value, then we conclude that it was such a property right as vested in the trustee, and

that Hudson could not in any manner divest the trustee thereof, or diminish the value, by any action he might take, by contract or otherwise.

It is also argued that, assuming Palmdale to be the corporate alter ego of Hudson, yet the trustee and creditors are not entitled to the bankrupt's earnings and no fraud was intended or committed or inequitable position created. In support of this contention it is said that the conduct of the bankrupt or his attorney was not that of a man who was about to commit or in the course of perpetrating a fraud. Somehow we cannot be sold on this proposition. Quite to the contrary, the entire record supports the conclusion that while Hudson and Granger might not have had larceny in their hearts, certainly they at all times worked industrially to defraud Hudson's creditors out of some $350,000.00.

Appellants earnestly contend that the joint venture contract was not divisible; that the trustee having the burden of proof on this point failed to carry it; that one-half of the proceeds and profits therefrom must go to the bankrupt rather than to the bankruptcy estate.

We have read all of appellants' cases concerning the divisibility of the joint venture contract which appellants term the "most determinative of the various phases of this case."

In re Leibowitt, 93 F 2 333, was a situation where the court determined that sums of money accruing to a bankrupt after adjudication by way of commissions paid to him on insurance policies written by him prior to adjudication were the property of the bankrupt and did not pass to his trustee. The contract between the insurance company and the bankrupt provided in detail the time.

manner and method by which the bankrupt, as its agent, was to earn and be paid his compensation. The court there pointed out that regardless of the law of the state of domicile the provisions of the Bankruptcy Act cut across state law, and that the right to collect money in the future is such a right as will pass to the trustee whether or not capable of being assigned under state law. It is said by the court that it is one of the salutary policies of the Bankruptcy Act that one's wages earned after adjudication belong to him and not to his trustee. To hold otherwise, said the court, would be to put the bankrupt into a type of involuntary bondage. With these comments we agree. However, a close scrutiny of the Leibowitt contract and the joint venture agreement with which we are here concerned indicates a great dissimilarity. Our case presents no "wage" feature, for Hudson, through the joint venture contract, "took a shot" at possible profits from the Commodity Credit Corporation deal which might be great, small, or none at all.

In the Leibowitt Case the court said:

"Had the bankrupt done all that he was required to do prior to adjudication to collect the compensation coming due, we have no doubt that a claim for his compensation would pass to his trustee and become an asset of the estate."

But, continued the court, such was not the factual situation in the Leibowitt Case—

"One need only examine the sections of his contract of employment heretofore quoted, in order to see that substantial service must be rendered by the bankrupt in order that the compensation referred to may become payable by the insurance company."

The court, affirming the findings of the referee on the point, said there was no way of separating the compensation for what was done prior to adjudication from that done after.

"Since the productive elements of the bankrupt's labor are inseparable in point of time, we hold that no contract rights therein can be deemed to pass to his trustee; nor can the trustee obtain any right therein by virtue of legal execution or equitable sequestration. So holding, the decision of the court below is affirmed."

The Seiffert Case, 18 F 2 444, has been discussed and argued at length. There Seiffert, a grain farmer, lost his ranch to the bank. The banker then entered into a contract with him whereby he agreed to operate the ranch for several years at a salary of $40.00 per month, or for two-thirds of the grain harvest, which option was to be exercised within a few days after harvest. After the harvest Seiffert elected to take the two-thirds of the grain. It was there said that wages earned prior to adjudication belong to the trustee, after to the bankrupt. But there were no wages involved in the Seiffert Case, and couldn't be until after the election between wages or a share of the crop. His choice wiped out the wage element, and the right to share the crop arose many months after adjudication.

This case is no guide in our present situation. The court said that the test was whether or not the bankrupt had at the time of adjudication any interest to be transferred. It held that he did not, and we agree. However, in our Hudson matter we find that on the date of Hudson's adjudication he, Hudson, had an assignable and transferable vested interest in the Commodity Credit Corporation contract, which as a property right passed to

the trustee. There was no subsequent contingency permitting either of two type of contracts to come into being as in the Seiffert Case, one wages, the other crop sharing.

In the case of In re Thomas, 204 F 2 788, Thomas had served as trustee in a state court for approximately one year before adjudication and three after. He was allowed $3,500.00 by the court as compensation for this period. It was there said:

"The portion of the fee which was earned prior to his petition in bankruptcy was not found, and an attempt to do so could only result in speculation and uncertainty. It could be that the major portion of the services rendered was prior to bankruptcy, and on the other hand, it could be that a major portion was rendered after bankruptcy. In other words there is no way of determining what, if any, compensation was due him as trustee at the time he filed his petition in bankruptcy."

It will be observed that here the court was in a quandary as to the divisibility of the compensation, and in addition to that Thomas was a public official, a trustee of the court. The opinion can be supported, first, on the generally accepted proposition of law that where it is impossible to apply the "before and after" breakdown to the fund the entire amount goes to the bankrupt, the burden being on the trustee to make out a situation to which the "divisibility" test can be applied; and, second, on the basis of the long established line of cases holding it to be against public policy to permit the assignment of the salary of public officials. We do not think the Thomas Case in point here.

In Lockhart v. Mittleman (CCA 2, 1941) 123 F 2 703, the court was dealing with another state court appointed

trustee. Here the trustee was adjudged a bankrupt on September 1st, 1939. On September 5, 1939, he filed his account with the court and asked for payment for services from July 1, 1938, to December 30, 1938. The court said the question is whether on September 1, 1939, his right to the allowance made was within the terms of Section 70, Sub. a(5) of the Bankruptcy Act, saying:

"As we interpret the court's grant, the situation was therefore merely an instance of the doctrine that the officer of a court cannot assign his compensation for services any part of which he has not yet performed. There never has been any doubt that such a power would be likely seriously to chill the officers zeal in the discharge of what remained of his duties, and courts have always denied it to him. On the other hand, if the services have all been rendered for which the allowance is made, the same reasoning does not apply, as we said in Fischer v. Liberty National Bank and Trust Co., supra (61 F 2 757) in explanation of Milnor v. Metz, 16 Pet. 221, 10 L. Ed. 943. The dividing line is therefore whether the compensation has been so far 'earned' that the officers conduct thereafter is not a factor in determining its amount."

In the course of its opinion the court cited its previously decided case of Fischer v. Liberty National Bank and Trust Company, 61 F 2 757, and the New York case of In re Worthington, 141 N. Y. 9, 35 N. E. 929.

Another case cited by appellants is In re Coleman, 87 F 2 753. This case involved money to become due an attorney on a contingent fee agreement. The attorney had, on the basis of his contingent fee agreement, begun a negligence action for his client in 1933. He was adjudged a bankrupt January 21, 1936. On March 11, 1939, a judgment was entered for his client. On appeal

the judgment was affirmed, June 16, 1936. The trustee then made claim to the bankrupt's attorney fee. The court discussed the difference between the "charging" lien of the attorney which it said existed from the beginning of the attorney-client relationship and continued until final judgment or settlement, and the common law lien which attached at the time of the final judgment or "honest" settlement. Then, said the court:

"We must determine whether an attorney under a contingent fee contract, prior to the creation of a fund by a favorable judgment or settlement, possesses any property or property right which passes to the trustee in bankruptcy. We think that he does not. Under the contract, the bankrupt had no rights till the services were fully performed and a fund was created. In re Woodworth, 85 F 2 50; and at common law no lien arose until that time."

In short, about all that the court said here was that a "charging lien" was not "property" such as would pass to the trustee under Section 70 of the Act. We think it too obvious for us to discuss the reasons why this case is not authority in Hudson's situation. No formula has been devised which furnishes a test for determining in all instances what contracts are severable and divisible, and what are entire. The primary criterion is the intention of the parties as determined from a fair construction of the provisions and terms of the contract itself, by the subject matter to which it has reference, and by the circumstances of the particular transaction giving rise to the question.

In Leeker v. Marcotte, (Ariz.), 15 P 2 969, 972, the court cited with approval the following from Wooten v. Walters, 110 N. C. 251, 14 S. E. 734, 735:

"A contract is entire and not severable, when by its terms, nature, and purpose, it contemplates and intends that each and all of its parts, material provisions and the consideration are common to each other, and independent . . . On the other hand a severable contract is one in its nature and purpose susceptible of division and apportionment, having two or more parts, in respect to matters or things contemplated or embraced by it, not necessarily dependent upon each other, nor is it intended by the parties that they shall be . . . This rule makes the interpretation of the contract depend on the intention of the parties as manifest by their acts and the circumstances of each particular case."

On the point under discussion here Benchley v. Durkee Famous Foods, 17 P.2 1020, is an interesting case to read.

The distinguishing mark of a divisible contract is that it admits of apportionment of the consideration on either side to correspond to the unascertained consideration on the other. Garman v. Hoover, 95 Pa. Supr. Rpts. 203. It is difficult to lay down a rule which will apply to all cases, consequently each case must depend very largely on the terms and type of the contract involved.

In Wadell v. White, 78 P 2 490, 496, the court said:

"We think that perhaps the best test is whether all of the things as a whole, are of the essence of the contract, if it appeared that the purpose was to take the whole or none, then the entire contract would be entire, otherwise, it would be severable. Wooten v. Walters, 110 N. C. 251, 14 S. E. 734, 36. The divisibility of the subject matter,

or the apportionment of the consideration, while they are both items to consider, in determining whether a contract is entire or severable, are not conclusive. A contract may be entire in the sense that there is but one agreement covering all the terms, and divisible in the sense that performance is divided into different groups. Primarily the intention of the parties control in determining the divisibility of a contract. And by agreement express or implied the parties may render divisible a contract which as originally drawn in the first instance was entire."

In concluding our remarks in connection with the cases upon which appellants would rely we do want to point out that in none of them could we detect the semblance of fraud, and in each the courts were dispensing justice between "clean handed" litigants. The strength and purpose of an equity court is to protect the unwary against the unscrupulous attempting to subvert its purpose by setting up its own benevolent maxims as a shield to fraud and chicanery. In this case before us the stench of fraud is unmistakable and appellants cannot now seek sanctuary in the benign court of equity.

Having concluded that Hudson "had a vested interest in, was the real party in interest in the joint venture contract with the Commodity Credit Corporation, and was entitled to share in the profits to be derived therefrom" it is obvious that even under the cases cited by appellants the contract became an asset of the trustee. In this connection we have also pointed out that in our opinion, Hudson, in lendnig his skill, experience and know-how in obtaining the Commodity Credit Corporation contract had, for all essential purposes, completed his part of the joint venture contract. It was the contribution of this skill, experience and know-how that was the consideration which induced Reeve to enter into the joint venture contract.

While it is true that the joint venture contract provides that Pacific-Palmdale Development Company will make the services of Hudson available to "procure and perform" contracts we have no hesitance, on the state of the record, in holding as we do, that the real consideration was to "procure" the Commodity Credit Corporation grain bin contract.

From a reading of Paragraphs 2 and 5 of the venture agreement it is obvious that there was no salary or fixed compensation contemplated or agreed upon. It is said that the "availability" of Hudson is one of the inducing considerations. We do not subscribe to such conclusion. The agreement required Reeve to "supply the management and all labor and material to supply any contract received after bidding on the same." What then was there for Hudson to do after a contract had been obtained? We can conceive of nothing except being available in the event Reeve wished to consult with him. We are of the opinion that when Paragraph 5 of the joint venture contract is read and reflected upon it becomes apparent that "procurement" was the task to be performed by Hudson, and that from then on it was up to Reeve to supply all financing, all management, all labor, all material "with the end in view of fulfilling all required work within the time specified."

True, it was agreed that Hudson would be "available" but that standing alone does not spell out a great deal. It is to be noted that the parties themselves treated Hudson's performance as having been virtually completed, for the first payment received from the Commodity Credit Corporation was divided equally between Reeve and Hudson, thus indicating that at the time of the procurement of the contract through Hudson's "know-how," he, Hud-

son, had become entitled to a one-half share of the profits without anything further to be done on his part. In any event the parties did not consider the "availability" of Hudson for consultative purposes of sufficient value or importance to withhold division of any of the Commodity Credit Corporation payments.

As we see it the real consideration running from Hudson to Reeve is the procurement of the contract with the Commodity Credit Corporation. The right thereafter to call upon Hudson in a consultative capacity we think is of little importance. This went into the contract on the basis of "tail with the hide." As the contract itself indicates Reeve, from the moment that a contract was secured, was required "to forthwith supply the management all labor and material . . . to the end in view of fulfilling all required work within the specified time."

It is our conclusion that (1) the joint venture contract is divisible, and (2) that, regardless of whether it is entire or divisible, performance had been to all intents and purposes completed at the time of the filing of the bid with the Commodity Credit Corporation on the 9th day of April, 1955, and prior to adjudication.

Perhaps we are dwelling overlong on this opinion but there is yet another facet that we would discuss. Appellants complain that there is no evidence in the record which would permit us to conclude, as we have, that the joint venture contract was divisible. We think that there is ample evidence in the record and so hold, even in the four corners of the joint venture agreement itself. But, even if this were not so the appellants cannot profit from such a deficiency, for the situation if such existed has been created by appellants themselves.

A reading of the transcript of testimony taken before the referee will show that every attempt on the part of the trustee to open up the divisibility angle of the joint venture contract was met with immediate and vociferous objections on the part of appellants. In each instance, when counsel for the trustee sought to enlighten the referee on this score, the objection, among others, was interposed that the questions were irrelevant, incompetent and immaterial. The record indicates that it is not through any lack of zeal on the part of the trustee's counsel that more evidence was not adduced on this point, but rather through appellants' blocking tactics.

It is hornbook law that a party who procures the exclusion of adverse evidence is estopped to assign as error the fact that the record is devoid of such evidence. The rule precluding an appellant from complaining of errors which he commits or invites, or from taking a position contrary to that adopted in the trial court, applies to errors in respect to the exclusion of evidence. In other words, one may not complain on review of errors below for which he is responsible. See Noble v. Miles, (Calif.), 129 Cal. App. 724, 19 P 2 265, stating:

"Parties must abide by the consequences of their own acts and cannot seek a reversal of a case upon appeal for errors which they had committed or invited. One who by his conduct induces the commission of some error by the trial court, or, in other words, has invited error is estopped from insisting that the action of the court is erroneous. 2 Cal. Jur. p. 846."

It was said in Brown v. Union Oil Company of Wichita, 114 Kan. 482, 218 P 998, that a litigant cannot take a contrary position, one in which he has sought and procured

an order, ruling, or judgment in the trial court, and another in the reviewing court in which he complains of such order, ruling or judgment. One may not on review complain of issues, proof, and variance where such errors were committed or invited by complainant, nor where the objection is inconsistent with the position taken below. The rule precluding an appellant from complaining of errors which he committed or invited, or from taking a position contrary to that taken below in the trial court, applies to errors in respect to the exclusion of evidence. When a party by his objections causes evidence which should have been admitted to be excluded he cannot draw presumptions in his favor from the excluded evidence. Gilmore v. Parris Inn, 10 Cal. App. 2 353, 51 P 2 1103. Where a party prevents proof by his objection, or procures its exclusion he cannot object that such a fact is not proved. Erickson v. Svete, 200 Ill. App. 151.

One may not complain on review of errors going to the weight and sufficiency of the evidence where he is estopped under the general rules precluding one from changing his position in the trial court, or complaining of error committed or invited by him. In Starr v. Lee, (Cal.) 263 P 376, the court said:

"We find authorities holding that recovery cannot be had when the evidence shows that no damage at all resulted from the breach (of the contract) but the rule is not available to the appellant because, when respondent attempted to prove damage, he was foreclosed by appellant's objection that it was immaterial and irrelevant. Appellant cannot now say that the judgment should be reversed because this evidence was not admitted. Harp v. Harp, (Cal.) 69 P 28."

A defendant objecting to the admission of evidence and thus excluding it cannot complain on appeal of the plaintiff's failure to produce such evidence. Hills Adm. v. Metropolitan Life Insurance Policy, (Ky.) 41 S W 2 935.

The Supreme Court in F. W. Woolworth Company v. Contemporary Arts, Inc., 344 U. S. 223, 231, had this to say relative to evidence excluded by appellants' objections:

"Respondent proved loss of some customers, and offered, but was not allowed, to show complaints from sales outlets about the Woolworth competition, decline in respondent's sales, and eventual abandonment of the line with an unsalable stock on hand. The trial judge excluded or struck most of this testimony on the ground that authority to allow statutory damages rendered proof of actual damage unnecessary . . . However, petitioner cannot complain of this exclusion, which was in response to its objections."

In Mach v. Abbot Company, 136 F2 7, 10, the following comment appears.

"Another settled rule of law is equally potent to bar the debtor's appeal . . . Assuming, but not deciding, that the decision of the district court in this regard is erroneous under the Act, still it is the law that a party cannot successfully complain of error for which he himself is responsible or of rulings which he has invoked the trial court to make."

In Missouri I. & T. Ry. Co. v. Elliott, 102 F 96, 103, the witness offered certain testimony and the defendant interposed objections to its admission, which were sustained by the court. The offered evidence was competent said the court.

"The rule is well settled that when the plaintiff offers and is ready to produce competent evidence to prove a

material fact in issue, and the court erroneously rejects it on the objection of the defendant the defendant will not afterwards be heard to say that the plaintiff failed to prove the fact which the rejected evidence would have established. The defendant will not be allowed to take advantage of his own wrong, or the errors of the court, induced on his own motion, and compel the plaintiff to suffer the consequences. To allow him to do so would be a travesty on justice. It would encourage unfounded, groundless, and captious objections to evidence, and reward sharp practice and chicanery. The law of estoppel may be successfully invoked to prevent such results."

See also Kelso v. Slosburg, 120 Cal. App. 479, 8 P 2 158, wherein it was stated by the court:

"Appellant urges that there is no evidence in the record supporting the allegations of the complaint and finding of the court that the contract of sale was fair, reasonable and just and the property worth the price specified. The record shows that the respondent attempted to introduce evidence to support this allegation of the complaint, but that it was excluded by the trial court on the objection of appellant. This ruling was unquestionably erroneous. The evidence having been excluded and error committed at the instance of appellant, he cannot now complain of the lack of the evidence and take advantage of the erroneous ruling of the trial court for which he was responsible. Brandt v. Brandt, 260 P 342. Further, there is some slight evidence in the record supporting the finding. Judgment affirmed."

In conclusion it can be said that a reviewing court will affirm where it appears that from the entire record the correct result has been reached, and we are of the opinion

that the correct result was obtained both by the lower court and the referee. Substantial justice has been done and on that basis an appeal court will affirm the correct result even though some error may have been committed. If there be error here it may be said to have occurred in connection with the trustee's attempt to go into the divisible nature of the contract. However, if error there was, for the several reasons hereinabove set forth, it is now immaterial.

Appellants have said that this court is not bound by the Findings of Fact of the Referee. Be that as it may the findings of the Referee were approved by the District Court. We are of the opinion the record sustains the Referee's findings, and that they were properly sustained and approved by the District Court. The Referee's findings have the same dignity and carry the same weight as those of a special master, and will not be set aside unless clearly erroneous. F. R. C. P. 52(a) and 53(e) (2). In Gold v. Gerson, (CA 9, 1955) 225 F 2 859, the court said:

"Most of the points urged by appellant involve questions of fact. On conflicting, and in some instances contradictory evidence, the Referee made Findings of Fact which were adopted by the trial court . . . Such findings are presumptively correct and will not be set aside unless clearly erroneous. Fed. Rules Civ. Proc., Rule 52(a), 28 U. S. C. A. The findings of the Referee and the trial court are sustained by the record and are not clearly erroneous."

In law cases the findings of fact of the lower court are equivalent to the verdict of a jury and will be disturbed on appeal only when shown to be clearly erroneous. In equity an appeal brings both the facts and the law before the re-

viewing court, and here both the law and facts have been reviewed by this court. Findings of fact of an equity court are not reviewable unless, on examination of all evidence, they appear to be clearly wrong. In our opinion the findings are supported by the evidence. Nor do we find any obvious error in the application of the law that would merit a reversal. The following quotes indicate the law:

"The findings of fact of a jury, special master, referee, or trial judge sitting in equity or without a jury will not be disturbed by an appellate court, unless a clear mistake has been made and there is no substantial testimony to support them (cases cited). We have carefully read the testimony, and, in our opinion, it abundantly supports the conclusions of the special master and District Judge. Wald v. Longacre, 34 F 2 25.

"The rule that the findings of fact of a referee or special master which have been approved by the district court will not be disturbed on appeal except on a clear showing of mistake, is of such universal recognition and uniform application in the federal courts as not to require citation of authority." Clements v. Coppin, 72 F 2 796.

* * *

Appellants concede that concurrent findings of master and judge upon conflicting evidence will not be set aside on appeal on anything less than a demonstration of plain mistake . . . In re Nathanson Bros. Co., 64 F 2 912.

* * *

Under such circumstances, the findings of the special master, so far as they depend upon conflicting testimony, or upon the credibility of witnesses, or so far as there is any testimony consistent with the finding, . . . must be

treated as unassailable. Davis v. Schwartz, 155 U. S. 631. So. Pac. Company v. Western Pacific California R. Co., 61 F. 2 732."

In Ott v. Thruston (CCA 9, 1935) 76 F 2 368, the court had before it an appeal from the District Court confirming a referee's report, and overruling and denying appellant's petition for review. Citing from the opinion:

"Another error stressed by appellant is that the judge of the district court erred in holding that where the evidence introduced before the referee in bankruptcy was conflicting, he was not at liberty to disregard the referee's findings. In that connection, the district court stated in its opinion: 'The evidence was at least conflicting, the district court is not at liberty to disregard the referee's findings for they find sufficient support in the evidence.' The court was there expressing the general rule of practice on review or appeal.

It is the recognized rule of the federal courts—especially in matters of bankruptcy—that on review of the decision of a referee, based upon his conclusions on questions of fact, the court will not reverse his findings unless the same are so manifestly erroneous as to invoke the sense of justice of the court. In re Stout, 109 F 794 (D. C. Mo.). See also In re Noyes Bros., 122 F 286 (C. C. A. 1).

As stated in O'Brien's Manual of Federal Appellate Procedure (1934 Cum. Supp., p. 63): The Court of Appeals for the Ninth Circuit, quotes with approval the language of Remington on Bankruptcy, footnote to Sec. 3871, 4th Ed., Vol 8, p. 227: 'And it is especially true that the reviewing courts will not disturb findings of fact except for manifest error, where both the referee and the district judge have coincided.' And the findings of a chan-

cellor, based on testimony, taken in open court, are presumptively correct and will not be disturbed on appeal, save for obvious error of law or serious mistake of fact. Neece v. Durst, 61 F 2 591 (C. C. 9); Swift v. Higgins, 72 F 2 791, 796 (C. C. 9); Exchange Nat. Bank v. Meikle, 61 F 2 176, 179 (C. C. 9)."

It is interesting to note that appellants' counsel concludes his discussion of these cases with this statement:

"The foregoing citations declare for the principle that an *honest bankrupt* shall not be required to labor throughout the future in a sort of involuntary servitude for his creditors, yet that is exactly what the district court decision would require of Mr. Hudson." (Italics ours)

And again, in appellants' brief, it is said:

"The bankruptcy act is a *benevolent statute*. It contemplates that an *honest debtor* may, under its influence, rehabilitate himself financially."

How one who has used every device to enrich himself, at the expense of creditors holding better than $350,000.00 of claims, can continually make use of the expression "honest debtor" is something we cannot understand. In frustration we can only recite the old saw "that none are so blind as those who won't see."

We prefer, in any event, to view appellants' position in the light of the words of the court in the Thomas case, supra:

"It should be remembered that the bankruptcy law is for the benefit of distressed creditors, whereby they may obtain a discharge of their debts. It presupposes, however, that one who seeks its protection will deal honestly and fairly with his creditors by furnishing a complete and

accurate schedule of his assets. A failure to do this, if intentional, is a fraud, the perpetrator of which is in a poor position to seek protection on the basis of equity. If the result be harsh to the bankrupt, it is because he has become the victim of his own handiwork."

The judgment of the district court is affirmed.

(Endorsed:) Opinion. Filed March 1, 1957.

Paul P. O'Brien, Clerk.

FILED
AUG 8 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1956

No. [redacted]260

JOHN LUCAS HUDSON, SR., and PACIFIC PALMDALE DEVELOPMENT COMPANY, a corporation,

Petitioners,

vs.

WILLIAM A. WYLIE, as Trustee in Bankruptcy of the Estate of John Lucas Hudson, Sr., a bankrupt,

Respondent.

RESPONDENT'S BRIEF IN RESISTANCE TO PETITION FOR WRIT OF CERTIORARI.

THOMAS S. TOBIN,
Attorney for Respondent,
WILLIAM A. WYLIE,
817-111 West 7th St.,
Los Angeles, California,
Trustee in Bankruptcy for John Lucas Hudson, Sr.

FRANK C. WELLER,
HUBERT F. LAUGHLIN,
WILLIAM E. BARTLEY,
ANDREW F. LEONI,
JOSEPH S. POTTS,
Of Counsel.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

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IN THE

Supreme Court of the United States

October Term, 1956

No. 1160

JOHN LUCAS HUDSON, SR., and PACIFIC PALMDALE DEVELOPMENT COMPANY, a corporation,

Petitioners,

vs.

WILLIAM A. WYLIE, as Trustee in Bankruptcy of the Estate of John Lucas Hudson, Sr., a bankrupt,

Respondent.

RESPONDENT'S BRIEF IN RESISTANCE TO PETITION FOR WRIT OF CERTIORARI.

The respondent, William A. Wylie, as Trustee in Bankruptcy of the estate of John Lucas Hudson, Sr., upon noting that the Petition for Writ of Certiorari of the Petitioner grossly slants the facts and at places is disrespectful of the Referee in Bankruptcy and of the United States Court of Appeals for the Ninth Circuit, hereby submits this Brief to expedite a speedy termination of this litigation and to defend the Referee in Bankruptcy and the United States Court of Appeals for the Ninth Circuit on the record.

We invite the Court's attention to page 7 of the Petitioners' Petition for Writ of Certiorari in the heading entitled "ARGUMENT FOR ALLOWANCE OF THE WRIT."

wherein the Petitioners, without any support whatsoever from the record, make the following comments regarding the Referee, said comments being wholly irrelevant:

> "The Referee had qualified as such on the Friday preceding the Wednesday when the hearing started. His calendar was made up by a transfer of matters from the calendar of another Referee. With an eagerness to aid creditors which was so avid as to wholly overlook the rights of the bankrupt the Referee determined a fraud which never existed nor was inferable from the evidence."

It is submitted that the Referee, the Honorable Joseph J. Rifkind, prior to his appointment to the bench, was an outstanding specialist in Bankruptcy Practice, having specialized in the same for a period in excess of thirty years. It is further submitted that the record is completely devoid of any evidence to support the above disrespectful comments.

In the last paragraph starting on page 7 of the Petitioners' Petition, the Petitioners accuse the United States Court of Appeals of misquoting plain provisions of State and Federal Case and Statutory Law, ignoring and not determining material issues, straining at illogical inferences from the evidence, and of formulating definitions for terms contrary to judicial and dictionary recitals. The Brief then fails to substantiate these grossly disrespectful charges; fails to demonstrate wherein the Court of Appeals misquoted State and Federal Case and Statutory Law, and fails to demonstrate wherein the Court "formulated definitions for terms contrary to judicial and dictionary recitals." We feel that such accusations are out of place in briefs to this Court and that such accusations are so venomous as to practically constitute contempt of the United States Court of Appeals.

Questions Presented for Review.

The Petitioners spent approximately a page and a half presenting three alleged questions which the Petitioners allege to be questions presented on review.

We are unable to ascertain with any degree of accuracy the precise nature of the questions which the Petitioners present to the Court, and for that reason set forth the following questions presented on review, which, in our opinion, are the only questions presented to the Court:

(a) Whether or not the Pacific Palmdale Development Company was the *alter ego* of the bankrupt;

(b) Whether or not the assets earned under the joint venture contract between the Pacific Palmdale Development Company and Lloyd R. Reeve, Inc., are assets of this bankrupt estate.

Statement of the Case.

The Petitioners' Statement of the Facts found on pages 5 and 6 of the Petitioners' Petition conflicts with Findings of Fact of the Referee and with the statement of the case given by the United States Court of Appeals in its Opinion, and radically differs from the Respondent's version of the facts. For that reason the Respondent makes the following Statement of Facts:

Late in 1952 or early in 1953 John Lucas Hudson, Sr., hereinafter referred to as the bankrupt, made an Assignment for Benefit of Creditors and was unsuccessful in obtaining a release from his creditors. [Tr. p. 205.] The Assignment was still in force and effect at all times herein mentioned. [Tr. pp. 205, 206, 207.]

In the summer of 1953 Mr. Merrill E. Granger, the bankrupt's attorney, prepared a Sole Trader Agreement

giving the wife her earnings as sole and separate property, the sole purpose being to enable the bankrupt to get started in business again without creditors being able to to attack his earnings [Tr. pp. 232, 233, and Ex. "C" in proceedings before the Referee]; Merrill L. Granger at all times had knowledge of the Assignment for Benefit of Creditors [Tr. pp. 361, 319]; Merrill L. Granger had no knowledge or skill regarding the construction or erection of grain bins [Tr. p. 326]; the bankrupt had personal knowledge and skill regarding the submission of bids for grain bins and the construction thereof. [Tr. pp. 72 to 74.]

On numerous occasions between the summer of 1954 and the date of bankruptcy, the bankrupt was advised by Mr. Granger that if he accumulated substantial earnings without a release from his creditors the accumulation would be subject to creditors' demands [Tr. p. 267]; that he should not commit his services [Tr. p. 197] and that he should not be an officer of a corporation [Tr. p. 208]; bankruptcy was contemplated and advice given to the bankrupt by Mr. Granger long prior to the transactions which were the subject of the action which gave rise to this appeal [see Tr. pp. 299, 293, 277 and 267]; and at the time of the formation of the Pacific Palmdale Development Company hereinafter discussed, the bankrupt and Mr. Granger were discussing the filing of a Petition in Bankruptcy, and had in fact sought independent advice of bankruptcy specialists. [Tr. pp. 256, 318, 419, 320 and 323.]

In March of 1954 Articles of Incorporation of Pacific Palmdale Development Company were signed by the alleged incorporators, one Philip Bloom, the wife of the bankrupt and the bankrupt's son. Mr. Bloom withdrew from the Pacific Palmdale Development Company and had

no interest in and to the grain bin transaction prior to the execution of any contract concerning the same. [Tr. of Record, pp. 357, 283, 284, 289, 290 and 306.]

The wife of the bankrupt was a housewife with five children, who had never been in business for herself and had no training in any commercial pursuits. [Tr. p. 203.] She owned nothing other than property which was a result of the earnings of the bankrupt and contributed nothing to the corporation other than nominal incorporation costs. [Tr. p. 204.] The son of the bankrupt, William Hudson, at the time of incorporation, and at all times prior to the execution of any contract, resided in Portland, Oregon, with his family; was 27 years of age; contributed nothing to the corporation, and in fact functioned as a superintendent and was paid a salary for such services as a superintendent. [Tr. pp. 220, 221.] The Pacific Palmdale Development Company did not issue any stock [Tr. of Record, p. 221]; had no capital [Tr. of Record, pp. 324 and 330]; did not keep any ledgers or accounts, and had no capital structure or financial transactions beyond its mere incorporation. [Tr. of Record, p. 324.]

Bankruptcy was filed by the bankrupt on April 19, 1954 and approximately seventeen days prior to bankruptcy the bankrupt contacted Lloyd R. Reeve, informing him that he wanted to find someone to come in with him in a grain bin deal. No mention was made of a corporation. It was proposed that Mr. Reeve finance the submission of bids to the Commodity Credit Corporation and the manufacturing and erection of such bins. [Tr. of Record, pp. 72 to 74.]

On April 3 or April 4, 1954, approximately fifteen days before bankruptcy, a firm understanding was reached be-

tween the bankrupt, individually, and Lloyd R. Reeve, that Reeve would finance the project and that after expenses were determined each would be entitled to one half of the profits. It was only on April 5 or April 6, 1954 that any discussion was had regarding the Pacific Palmdale Development Company [Tr. of Record, pp. 71 to 76], and at that time the bankrupt represented he was the Pacific Palmdale Development Company. [Tr. of Record, p. 77.]

During the various negotiations between Reeve and Hudson, the bankrupt represented to Reeve and to his attorney, Mr. Carl Minton, Sr., that he was the sole owner of the Pacific Palmdale Development Company [Tr. of Record, pp. 81 and 153]; represented that he had organized the Pacific Palmdale Development Company to benefit himself [Tr. p. 82], and the bankrupt's attorney represented that Mr. Hudson had a corporation. [Tr. of Record, p. 161.]

On April 3, 1954 the Articles of Incorporation of the Pacific Palmdale Development Company were mailed to the Secretary of State of the State of California, and on April 6, 1954 the Pacific Palmdale Development Company was incorporated. [See Answer of bankrupt and of the Pacific Palmdale Development Company among exhibits.]

On April 7, 1954, Mr. Reeve and the bankrupt met in Washington, D. C., for the purpose of submitting bids. [Tr. pp. 78 to 79.] At this time the bankrupt presented a joint venture contract, in writing, to Reeve, whereby Lloyd R. Reeve, Inc., a corporation owned by Reeve, en-

tered into a joint venture with the Pacific Palmdale Development Company with Reeve providing the financing for grain bin contracts with the Commodity Credit Corporation, and Pacific Palmdale Development Company was to furnish personal services of the bankrupt to Lloyd R. Reeve, Inc. [Tr. of Record, pp. 78 to 79, and Exhibits designated in the designation of record on Appeal before the Circuit Court.] On April 7, 1954 the bankrupt ostensibly on behalf of the Pacific Palmdale Development Company, executed the agreement referred to, as treasurer of the Pacific Palmdale Development Company. (Note: This was a mere thirteen days prior to bankruptcy.) On April 8, 1954, Pacific Palmdale Development Company allegedly passed a resolution authorizing the bankrupt to act as treasurer for the sole and limited purpose of executing the contract between Lloyd R. Reeve, Inc. and Pacific Palmdale Development Company. [See Exhibits designated in the designations of record on Appeal before the United States Circuit Court.] In Los Angeles and in Washington, D. C., the bankrupt prepared estimates, plans and specifications and assisted in the preparation of all phases of a bid to be submitted to the Commodity Credit Corporation, and was the only person among those involved who had any special knowledge or skill regarding the preparation of such bids for the erection of grain bins [Tr. of Record, pp. 272, 274 and 92]; and on April 9, 1954, ten days prior to the bankruptcy, the bid was submitted to the Commodity Credit Corporation. [Tr. of Record, p. 92.]

On April 17, 1954, two days prior to bankruptcy, a conditional acceptance of the bid was forwarded to Lloyd R. Reeve, Inc., by the Commodity Credit Corporation. [Tr. of Record, p. 93.] On April 19, 1954, conveniently the day of bankruptcy, Lloyd R. Reeve, Inc. accepted the bid of the Commodity Credit Corporation. [Tr. pp. 93 and 94.]

On April 20, 1954, one day subsequent to bankruptcy and one day subsequent to the acceptance of the bid by Lloyd R. Reeve, Inc., the Board of Directors of the Pacific Palmdale Development Company conveniently passed a Resolution which, among other things, contained a resolution that the first $50,000.00 payable to the Pacific Palmdale Development Company, under the joint venture contract of Lloyd R. Reeve, Inc., be payable to the bankrupt. Schedules of the bankrupt in no way disclosed any interest of the bankrupt in and to Pacific Palmdale Development Company nor in the joint venture contract with Lloyd R. Reeve, Inc., and the bankrupt listed creditors in an amount of $327,471.16. [Tr. p. 207.] More than a year subsequent to bankruptcy the above transactions came to the attention of the Trustee from a third party, and it was then and only then that the proceedings giving rise to this Appeal were instituted.

ARGUMENT.

The Petition for Writ of Certiorari Does Not Comply With the Supreme Court Rules 23 and 19.

The Petition for Writ of Certiorari does not comply with Rule 23(1)a, 28 U. S. C. A., p. 15, reading as follows:

1. The Petition for Writ of Certiorari shall contain in the order here indicated—

(a) A reference to the official and unofficial reports stated in the Courts below, if any, and if reported. Any such Orders shall be appended as provided in paragraph (i) hereof.

No copy of the Order of the District Court or of the Findings of Fact, Conclusions of Law and Order of the Referee dated December 6, 1955 are appended to the petition for Writ of Certiorari.

The questions presented on review are lengthy and ambiguous, containing unnecessary detail. (See pp. 2, 3 and 4 of Petitioners' Petition for Writ of Certiorari, and the questions therein propounded.) The respondent does not believe that these questions comply with 1-(c) of Rule 23 of the Supreme Court, *supra*.

The Petition should be denied under Section 1(j)4 of Rule 23 of the Supreme Court, *supra*, reading as follows:

> "The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring

consideration will be a sufficient reason for denying his petition."

The Petition does not show acceptable grounds for invoking jurisdiction on Writ of Certiorari under Rule 19 of the Supreme Court. Rule 19, Supreme Court Rules, 18 U. S. C. A., page 12, Appendix I, does not contain any grounds of consideration governing review on Certiorari wherein the Court will grant a Petition for Writ of Certiorari under grounds set forth in (a) on page 12 of the Petition for Writ of Certiorari, "misstatement and misapplication of the Federal Rules in a bankruptcy matter," but on the contrary contains grounds where decisions conflict with any Court of Appeals on the same matter or where the Court of Appeals has decided an important question of Federal law which has not but should be settled by this Court. Item (b) of the Petitioners' Grounds for Invoking Jurisdiction found on page 2 of the Petitioners' Petition contains no allegations to the effect that this is an important State or Territorial question, and also fails to set forth any grounds for invoking jurisdiction under Rule 19 of Rules of the Supreme Court, *supra*.

A. The Statutes Cited by the Petitioners Have No Applicability Whatever to This Case.

Article 300, Chapter 2, Division 1, Part 1, Volume 1 of Deering's Labor Code of California, cited on page 4 of the Petitioners' Petition and relating to assignment of wages, has no applicability whatever to the facts of this case. The evidence presented at the trial before the Referee was direct and conflicting regarding the purpose of incorporation of the Pacific Palmdale Development Company, the bankrupt and his attorney testifying that

Pacific Palmdale Development Company was organized to benefit the bankrupt's attorney, and other witnesses testified that this was his corporation; that he had been advised that he could not be an officer of a corporation; that he could not accumulate earnings and that the whole transaction was engineered by the bankrupt. [See Statement of the Case, references to Transcript, *supra*.]

The following facts testified to by the various witnesses conclusively demonstrated that the Pacific Palmdale Development Company had no purpose save and except as an instrumentality to remove assets of the bankrupt from the reach of creditors: the bankrupt's Assignment for Benefit of Creditors; the knowledge of the bankrupt's attorney that the same was without release [Tr. pp. 232-233, 316-319] The execution of the Sole Trader Agreement, the sole purpose being to enable the bankrupt to get started in business again without creditors being able to attack his earnings. [Tr. pp. 232-233 and Ex. "A" proceedings before the Referee.] The lack of any special knowledge or skill concerning the construction or erection of grain bins, of the bankrupt's attorney, the bankrupt's wife, the bankrupt's son and any other parties connected with the transaction [Tr. pp. 320, 20-21, 203-204]; the fact that the bankrupt had personal knowledge and skill regarding the submission of bids and the erection and construction of grain bins [Tr. pp. 272, 274]; the fact that the bankrupt was advised on many occasions that he could not accumulate substantial earnings without a release from his creditors; the fact that the advice of a specialist in bankruptcy had been solicited prior to the execution of the joint venture contract between the Pacific Palmdale Development Company and Lloyd R. Reeve, and

prior to the incorporation of the Pacific Palmdale Development Company [Tr. pp. 267, 197, 232, 233, 316, 319, 299, 293, 277, 256, 323 and 320]; the fact that negotiations commenced between the bankrupt and Lloyd R. Reeve as individuals on April 2 or April 3, 1954. [Tr. pp. 72-74.] The bankrupt conducted all negotiations with Lloyd R. Reeve and arrived at a firm understanding prior to any written agreement or mention of Pacific Palmdale Development Company [Tr. pp. 72-76]; the fact that the bankrupt on numerous occasions represented that he owned the Pacific Palmdale Development Company [Tr. of Record, pp. 77, 81, 153, 256 and 161]; the fact that the Pacific Palmdale Development Company was not incorporated until thirteen days prior to bankruptcy. (See Statement of Case, *supra*); the Pacific Palmdale Development Company did not issue any stock, had no capital, did not keep any ledgers or accounts, and had no financial structure or financial transactions beyond its mere incorporation [Tr. pp. 221, 324-330]; the only shareholders were to be the bankrupt's son, the bankrupt's wife and the bankrupt's attorney [Tr. pp. 326-327]; the fact that the joint venture contract contained clauses that the Pacific Palmdale Development Company would furnish personal services of the bankrupt and that the Pacific Palmdale Development Company could assign its interests to the bankrupt [see Exhibits designated]; the fact that on April 8, 1954, eleven days prior to bankruptcy, the directors of Pacific Palmdale Development Company passed a Resolution whereby the bankrupt was authorized to execute the joint venture agreement; the fact that one day subsequent to bankruptcy the Board of Directors of the Pacific Palmdale Development Company passed a Resolution whereby the

first $50,000.00 of profits were assigned to the bankrupt [see Answer of bankrupt among Exhibits designated]; the fact that approximately thirty-one days after bankruptcy the bankrupt was paid $15,000.00 [Tr. p. 96], and was paid an additional $6,000.00 constituting all funds paid over to Pacific Palmdale Development Company by Lloyd R. Reeve, Inc.

From the above evidence it should at once be apparent that the bankrupt organized the Pacific Palmdale Development Company for his sole benefit to conceal assets from his creditors and could have contracted directly with Lloyd R. Reeve, Inc. without the medium of a corporation. It should also be apparent that the only services rendered were rendered by Hudson and no services whatever were rendered by the Pacific Palmdale Development Company. The basic contract with Lloyd R. Reeve was clearly a joint venture contract and not an agreement wherein Lloyd R. Reeve employed Pacific Palmdale Development Company or Hudson as an employee to receive wages. It was clearly a profit-sharing transaction. Hudson was clearly the *alter ego* of the Pacific Development Company and as such had a profit-sharing risk contract amounting to a joint venture with Lloyd R. Reeve, Inc.

We know of no authority and the Petitioners have not cited any authority which would in any way hold that an interest in a joint venture is synonymous with, or tantamount to, wages. We know of no California cases whatever which hold that an interest in a joint venture is in any way subject to the provisions of Article 300, Chapter 2, Division 1, Part 1 Volume 1 of Deering's Labor Code of California relating to assignments of wages or salary, and therefore submit that the said Statute is in no way related to the issues of this case.

Gray v. Perlis and Section 158 of the Civil Code of California Do Not Apply to the Facts of This Case.

The case of *Gray v. Perlis*, 76 Cal. App. 511, 245 Pac. 221 (1926), was a case where Perlis, after making an assignment for benefit of creditors, became sick and unable to earn a livelihood for himself or his family, and the burden of supporting the family fell on Mrs. Perlis. The wife in 1916 applied to the Superior Court and obtained a decree of Sole Tradership. The wife opened a ladies tailoring business on premises leased by herself, conducted all negotiations for the opening of the business, and provided the initial cash capital by pawning her own separate property. Some four years later the husband filed a voluntary Petition in Bankruptcy and was adjudicated a bankrupt. On the facts, the trial Court found that the Sole Tradership was not a fraudulent device or a blind; that no conspiracy existed, and that all the capital and assets were the separate property of the wife. The Appellate Court affirmed on conflicting evidence.

In the instant case, the wife of the bankrupt was not trained in commercial pursuits; contributed no capital whatever; the sole asset of the Pacific Palmdale Development Company was the personal services of the bankrupt and the Pacific Palmdale Development Company was incorporated a mere thirteen days prior to bankruptcy; the wife of the bankrupt performed no functions whatever in connection with the joint venture contract and the facts are in no way comparable to *Gray v. Perlis*.

In the instant case, the corporation was obviously organized to conceal assets from creditors at a time when bankruptcy was contemplated, and the bankrupt personally performed all services performed.

It is further interesting to note that in the instant case all of the funds which accumulated were paid over to the bankrupt. [See various references to Transcript, *supra*.]

The ultimate holding of the Court in *Gray v. Perlis* was that the evidence was sufficient to support contested Findings that the assets were separate property of the wife. (See *Gray v. Perlis*, 76 Cal. App. 511 at 517.) References of the Petitioners to *Gray v. Perlis* on page 8 of their Petition are out of context as to the holding found at page 515 was that

> "creditors have no lien on a debtor's labor, nor any way to compel him to work, and consequently he may legally give his entire time, skill and industry to his wife *in aiding* to *carry on a business owned by her* . . . (Italics supplied.)

This does not stand for the proposition for which the Petitioners cite it.

In the instant case the Pacific Palmdale Development Company was the *alter ego* of the bankrupt and actually owned by the bankrupt and not by the bankrupt's wife. Services were not contributed to the bankrupt's wife as was the case in *Gray v. Perlis*. It is therefore again submitted that *Gray v. Perlis* has no application to the instant case.

Section 158 of the Civil Code of California does not apply to the facts in the instant case as this case does not involve a situation where the wife is engaged in business and the husband contributed his services to the business owned by the wife. It does involve a fraudulent and sham corporation wholly owned and dominated by the bankrupt, a corporation without assets, which did not carry on any business whatever. Any holding to the effect that a

joint venture contract between Lloyd R. Reeve, Inc. and Pacific Palmdale Development Company was in fact a contract between the bankrupt and Lloyd R. Reeve, Inc. would in no way conflict with the terms and provisions of Section 158 of the Civil Code of California.

The Findings of Fact of the Referee Should Not Be Reversed Unless Clearly Erroneous.

A reading of the entire Petition of the Petitioners and more particularly the Petitioner's Statement of the Facts and Argument contained on pages 7, 8, 9, 10 and 11, discloses that the Petitioners do not refer to the Transcript of the Record to substantiate their Statements of the Facts and that the facts so stated by them are, in numerous instances, directly contrary to the Findings of Fact and Conclusions of Law of the Referee.

It is apparent that a substantial portion of the Argument for the allowance of the Petition is an argument on the facts, and it is submitted that there was conflicting evidence on all of the facts and elaborate and detailed Findings of Fact and Conclusion of Law regarding all of the facts were made, and the Petitioners have in no way demonstrated how these Findings were clearly erroneous.

It is Hornbook law that the Findings of the trial judge and of the Referee in Bankruptcy will not be reversed unless clearly erroneous. (See *Gold v. Gerson*, 225 F. 2d 859 (C. C. A. Ninth, 1955).)

The Petitioners' Entire Argument Is Based on the Erroneous Assumption That Hudson Had an Agreement to Perform Personal Services.

We have heretofore clearly demonstrated that the entire transaction was conceived for the purpose of hindering, delaying, defeating and defrauding creditors of Hudson. An examination of the joint venture contract between Lloyd R. Reeve, Inc. and the Pacific Palmdale Development Company [Trustee's Ex. 1 at trial, designated among Exhibits designated] reveals that this is purely and simply an agreement to divide the net profits of any grain bin contracts awarded to and performed by the parties during the year 1954. It is not an employment contract nor does it purport to employ Hudson. We submit that this was a joint venture contract between Lloyd R. Reeve, Inc. to share the profits of the grain bin transactions and the parties actually did share the profits shortly after bankruptcy, and that all arguments relating to the performance of employment are therefore inappropriate and out of point.

The argument advanced by the Petitioners, commencing at the last paragraph on page 10 of the Petitioners' Petition, is also unsound as a reading of the joint venture contract will at once reveal that regardless of any conditions precedent or subsequent, the bankrupt had a vested right on the execution of the joint venture contract, to share in any profits realized. If no profits had been realized nothing would have accrued to the bankrupt.

The cases cited in this argument furthermore did not stand for the proposition for which the Petitioners' cite them. Page 45, Section 38(a) and page 66, Section 60 of the Restatement of the Law of Contracts, and Volume 3,

page 1917, Section 667-A of the Revised Edition of Williston on Contracts refer to counter-offers and in no way relate to performance bonds. The case of *Flynn v. Dougherty*, 3 Cal. (unreported) 412, 26 Pac. 831, relates to the filing of a bond in connection with a building to be erected for the State of California as a condition precedent to the right of a materialman to file an action for damages, and is a ruling on a motion for dismissal or a nonsuit It does not relate to the question of whether or not a contract exists relating to a joint venture or to any condition precedent to the right of one party to a joint venture contract to share in the profits. This case therefore clearly does not stand for the proposition for which the Petitioners cited it.

Furthermore, the evidence shows that the Commodity Credit Corporation accepted the bids from Lloyd R. Reeve, Inc. on April 17, 1954, and that on April 19, 1954, Lloyd R. Reeve Inc. in turn accepted the acceptance of the Commodity Credit Corporation. Not one scintilla of proof by way of defense was offered by the bankrupt or by the Pacific Palmdale Development Company as to the precise terms of the contract between the Commodity Credit corporation and Lloyd R. Reeve, Inc. (*supra*); admitted in their Answer the existence of the contract and the fact that profits were received under the contract. [See Exhibits on file designated in Designation of Record on Appeal before the Circuit Court.] No proof was offered regarding the bond requirements of the Commodity Credit Corporation

It is therefore submitted that the Petitioners' contentions are completely devoid of any support from the record.

The Court of Appeals Ruled on All Issues Presented to the Court by the Petitioners.

A reading of the Opinion of the United States Court of Appeals (which Opinion may be found reported at 242 F. 2d, page 455, will reveal that the Court devoted some thirty-six pages to the proposition that fraud was very apparent and that assets were concealed from creditors, yet, on page 19 of the Petitioners' Petition the Petitioners make this startling statement

> "5. The subject Opinion did not respond to an issue presented to the Court by Petitioners which, in good thinking, could only be resolved by reversing the ultimate conclusions of that Opinion. In this argument we have said that there could be no actionable fraud if there is no damage."

The Petitioners then go on to argue that there was no fraud as creditors could have attached moneys owing from Reeve to the bankrupt, and that the Pacific Palmdale Development Company did not hold money adverse to the bankrupt.

How the Petitioners could explain that the bankrupt failed to make any mention of any moneys owing from Reeve to the bankrupt or any moneys owing from the Pacific Palmdale Development Company to the bankrupt, or of any joint venture contract in his schedules, and how the same did not, *ipso facto*, defraud creditors and the Court, we fail to see and thoroughly concur with the Court of Appeals when at page 452 of their Opinion they state: "In the consideration we can only recite the old saw 'there are none so blind as those who won't see.'"

If we were to accept the above argument of the Petitioners it could be argued that in any *alter ego* case

there could be no such thing as an *alter ego* corporation, as creditors could not be defrauded as they would have a right to sue or attach obligors of the *alter ego* corporation by merely suing and alleging that the *alter ego* corporation was the *alter ego* of their debtor. If we were to accept their argument there would be no reason for the *alter ego* doctrine in the law.

Point 6 of the Petitioners' Petition Is Completely Illogical.

Point 6 of the Petitioners' Petition found on page 20 argues that the reasoning of a Court of Appeals is illogical and out of line with the evidence. On the contrary, we submit the entire argument contained under this heading is in itself illogical. The argument fails to take into account that the bankrupt conducted all negotiations leading to the execution of the joint venture contract [*supra*]; that the bankrupt and the bankrupt's attorney represented on numerous occasions that the bankrupt owned the Pacific Palmdale Development Company and was the Pacific Palmdale Development Company [*supra*]; that the bankrupt could have executed the contract directly with Lloyd R. Reeve, Inc. [*supra*]; that the contract was a joint venture contract and an agreement to participate in the profits of a joint venture transaction, as distinguished from a contract to render personal services.

The Court of Appeals' Ruling Re Procedural Estoppel Was Correct.

No. 7 of the Argument of the Petitioners, found on page 21, again argues by quoting only those portions of the record favorable to the Petitioners and by ignoring substantial portions of the record, which amounts substantially to an argument of facts.

The Court of Appeals at page 448 of their Opinion clearly states that on numerous occasions the Petitioners objected to the introduction of testimony on the divisibility angle of joint venture contracts and that the objections, among others, were interposed that the questions were irrelevant, incompetent and immaterial.

Among other objections, the objection was made that questions were irrevelant, incompetent and immaterial. [See objections interposed by the Petitioners on pp. 84, 87-88 of the Transcript of the Record.]

The Petitioners have not cited any case authority nor have they in any manner attempted to show that the questions presented to which they objected, were incompetent, irrelevant or immaterial, and on the contrary now argue that the questions and the divisibility of the contract are very relevant and so relevant as to require reversal of the decision of the Court of Appeals, of the District Court and of the Referee.

We submit that but for the delaying tactics of the Petitioners, complete evidence of the divisibility of the contract would have been presented to the Court and the error they complain of, if any, would not be in the record. The

very cases cited by the Petitioners on page 21 sustain the proposition that they should be estopped from now urging an error which they induced.

In addition to the foregoing, from the record the Court of Appeals sitting as a court of equity (this was a review of a bankruptcy decision), made the specific finding of fact that the joint venture contract was divisible and that regardless of whether or not the contract was divisible, performance had been to all intents and purposes completed at the time of the filing of the bid with the Commodity Credit Corporation. (See p. 448 of the Decision of the Court of Appeals.) These findings are based on conflicting evidence, and it is uncontrovertible that Hudson went to Washington, D. C. and assisted in the preparation and presentation of the bids. [Tr. of Record, pp. 91, 36-37, 223.] That prior to the trip to Washington, D. C. and the signing of the written joint venture contract Reeve and Hudson prepared plans, made estimates, took off material lists, and made arrangements with an influence man. [Tr. of Record, pp. 136-137.] That the estimates and plans were all prepared by the bankrupt and his assistants or associates prior to the time that Reeve and Hudson left for Washington some thirteen days prior to bankruptcy, and that prior to Bankruptcy the profits had been estimated, and there merely remained for the Commodity Credit Corporation to accept the bid (*supra*); that the acceptance of the bid took place before bankruptcy and was affirmed on the very day of bankruptcy (*supra*); with the additional fact that all of the moneys paid out of joint venture funds were divided equally between Hudson and Lloyd R. Reeve, Inc., without any further performance, coupled with the other facts, certainly gave rise to a logical inference that Hudson's performance was com-

plete prior to bankruptcy, and that the contract was divisible.

In addition, the contract itself [*supra*] indicates Reeve, from the moment that the contract was secured, was required "to forthwith supply the management of all labor and material . . . . to the end in view of fulfilling all required work within the specified time."

As pointed out by the Court of Appeals at page 447 "What then was there for Hudson to do after the contract had been obtained? We can conceive of nothing except being available in the event Reeve wished to consult him." In addition, any experienced contractor could have fulfilled the contract with the Commodity Credit Corporation by following the plans and specifications, estimates, etc. prepared prior to the offering of the bid.

The Cases Cited by Petitioners Relating to Separable Contracts and Earnings Subsequent to Bankruptcy Are Inapplicable.

At pages 31 to 34 each of the cases cited by the Petitioners in the argument contained in the Petitioners' Petition between pages 15 to 19, are distinguished, and the Court of Appeals after deciding that the contract was divisible and that, even if the contract was not divisible, performance had been completed at the time of bankruptcy, exhaustively distinguished and considered the very cases in the argument before this Court and the very astute reasoning of the Court of Appeals regarding these various cases, may be found at pages 443, 444, 445, 446 and 447 of that Court's Opinion. In a nutshell, these cases all deal with clean-handed claimants and do not involve cases which "scream fraud to the high heavens."

Conclusion.

We respectfully submit that the Petitioners' Petition for Writ of Certiorari should be denied as the Petition fails to show wherein any important question, such as would invite the Court's attention, was decided by the Court of Appeals; fails to demonstrate wherein the decision in any way conflicts with decisions of other Circuit Courts, or for that matter conflicts with any applicable State or Federal law; is not clear and concise but on the contrary is ambiguous and in places unintelligible.

The Petition is decidedly disrespectful to the Referee in Bankruptcy and to the Court of Appeals and advances no sound reason why the decision of the Court of Appeals should be reversed.

We therefore respectfully submit that the Court should deny Petitioners' Petition for Writ of Certiorari.

Respectfully submitted,

THOMAS S. TOBIN,
Attorney for Respondent,

WILLIAM A. WYLIE,
Trustee in Bankruptcy for
John Lucas Hudson, Sr.

FRANK C. WELLER,
HUBERT F. LAUGHARN,
WILLIAM E. BARTLEY,
ANDREW F. LEONI,
JOSEPH S. POTTS,
Of Counsel.

APPENDIX I.

Supreme Court Rules—Rule 19 (28 U. S. C. A., p. 12).

1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, or of any other Court whose determinations are by law reviewable on writ of certiorari.